Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 14 JUNE 4, 1980 No. 23

This issue contains

T.D. 80–133 through 80–140
C.S.D. 80–51 through 80–55
C.R.D. 80–4
Protest abstracts P80/67 through P80/70
Reap. abstracts R80/144 through R80/156
International Trade Commission Notice

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price: $1.30 (single copy domestic); $1.65 (single copy foreign). Subscription price: $65.00 a year domestic; $81.25 a year foreign.

U.S. Customs Service

Treasury Decisions

(T.D. 80–133)

(19 CFR Parts 113, 153, and 159)

Transfer of Antidumping and Countervailing Duty Functions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of transfer of functions.

SUMMARY: This document advises the public that (1) the antidumping and countervailing duty functions formerly exercised by the Department of the Treasury have been transferred to the Department of Commerce; (2) new antidumping and countervailing duty regulations have been issued, and will be enforced, by the Department of Commerce; and (3) the Customs Regulations will be amended in a forthcoming Federal Register document to reflect the transfer of functions and to make other changes conforming the regulations to the Trade Agreements Act of 1979.

FOR FURTHER INFORMATION CONTACT: Arthur I. Rettinger, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202–566–6245.

SUPPLEMENTARY INFORMATION:

TRANSFER OF FUNCTIONS

The Trade Agreements Act of 1979, Public Law 96–39, enacted July 26, 1979 (the act), repealed the Antidumping Act, 1921 (19 U.S.C. 160 et seq.) and significantly amended section 303, Tariff Act of 1930 (19 U.S.C. 1303), relating to the assessment of countervailing duties.

Title I of the act, "Countervailing and Antidumping Duties", establishes new law in both of those areas.

Subsequent to the foregoing legislative action, Reorganization Plan No. 3 of 1979 (44 F.R. 69273; Dec. 3, 1979) transferred responsi-

bility for the administration of the antidumping and countervailing duty laws from the Secretary and General Counsel of the Departmetn of the Treasury, and from the Department itself, to the Secretary of Commerce. The transfer of functions was made effective on January 2, 1980, by Executive Order 12188 (45 F.R. 989).

NEW DEPARTMENT OF COMMERCE REGULATIONS

The International Trade Administration, Department of Commerce, published new countervailing and antidumping duty regulations in the Federal Register on January 22, 1980, and February 6, 1980, respectively (45 F.R. 4932, 8182), to implement the statutory changes made by the act. The antidumping regulations are contained in part 353 of new chapter III, title 19, Code of Federal Regulations 19 CFR, chap. III). Countervailing duty regulations appear as part 355 of chapter III.

AMENDMENTS TO CUSTOMS REGULATIONS

Because of the statutory changes and transfer of functions described above, parts 113, 153, and 159 of chapter I, title 19, Code of Federal Regulations (19 CFR, chap. I, pts. 113, 153, 159), will be amended as follows:

1. Section 113.14(q) (19 CFR 113.14(q)), "Antidumping Bond, Customs Form 7591," will be deleted;
2. Part 153 (19 CFR, pt. 153), "Antidumping," will be deleted;
3. Section 159.41 (19 CFR 159.41), "Antidumping duties," will be amended to refer to the new Department of Commerce regulations;
4. Section 159.47 (19 CFR 159.47), "Countervailing duties," will be amended to refer to the new Department of Commerce regulations; and
5. A new section 159.58 (19 CFR 159.58), pertaining to the suspension of liquidation in antidumping and countervailing duty cases, will be added.

Those amendments are needed to ensure the continued efficient administration of the antidumping and countervailing duty laws.

Final amendments to the Customs Regulations, including the changes noted above, will be made in a separate comprehensive document which will be published shortly in the Federal Register and which will conform the Customs Regulations to the provisions of the act. Until that document is published, the public is advised that the antidumping and countervailing duty regulations promulgated by the Department of Commerce and codified in chapter III of title 19, Code of Federal Regulations, supersede the antidumping and countervailing

duty regulations set forth in parts 113, 153, and 159 of chapter I of the Code of Federal Regulations.

Dated: May 19, 1980.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

(T.D. 80–134)

Customhouse Broker License—Cancellation

Cancellation without prejudice of customhouse broker license 3761

Notice is hereby given that the Commissioner of Customs, on May 16, 1980, pursuant to section 641, Tariff Act of 1930, as amended (19 CFR 111.51(a)), upon the specific request of John A. Bartolomei, Chicago, Ill., canceled without prejudice individual customhouse broker's license No. 3761 issued to him on February 15, 1966, for the Customs District of Chicago, Ill. The Commissioner's decision is effective as of May 16, 1980.

Dated: May 16, 1980.

WILLIAM T. ARCHEY
(For Commissioner of Customs).

(T.D. 80–135)

Customhouse Broker License—Cancellation

Cancellation without prejudice of customhouse broker license 3281

Notice is hereby given that the Commissioner of Customs, on May 16, 1980, pursuant to section 641, Tariff Act of 1930, as amended (19 CFR 111.51(a)), upon the specific request of Mark M. Trilling, Elmwood Park, Ill., canceled without prejudice individual customhouse broker's license No. 3281 issued to him on November 16, 1960, for the Customs District of Chicago, Ill. The Commissioner's decision is effective as of May 16, 1980.

Dated: May 16, 1980.

WILLIAM T. ARCHEY
(For Commissioner of Customs).

(T.D. 80–136)

Customhouse Broker License—Cancellation

Cancellation without prejudice of customhouse broker license 3027

Notice is hereby given that the Commissioner of Customs, on May

16, 1980, pursuant to section 641, Tariff Act of 1930, as amended (19 CFR 111.51(a)), upon the specific request of Edward Limperis, assignee for the benefit of the creditors of Gallagher & Ascher Co., and Margaret A. Gillespie, president, Gallagher & Ascher Co., canceled without prejudice corporate customhouse broker's license No. 3027 issued to it on May 10, 1957, for the Customs District of Chicago, Ill. The Commissioner's decision is effective as of May 16, 1980.

Dated: May 16, 1980.

WILLIAM T. ARCHEY
(For Commissioner of Customs).

(T.D. 80–137)

Imported Lightweight Cab Chassis

Change of practice regarding tariff classification

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Change of practice.

SUMMARY: This document announces that Customs has found the current uniform and established practice of classifying imported lightweight cab chassis under the provision for bodies (including cabs) and chassis, in item 692.20, Tariff Schedules of the United States (TSUS), dutiable at the rate of 4 percent ad valorem, to be clearly wrong. That practice is being changed because it conflicts with principles announced in the decision of the U.S. Court of Customs and Patent Appeals in *Daisy-Heddon, Div. Victor Comptometer Corp.* v. *United States*, C.A.D. 1228 (1979).

Effective 90 days after publication of this notice in the Federal Register, it will be Customs practice to classify imported lightweight cab chassis under the provision for automobile trucks valued at $1,000 or more in item 692.02, TSUS, dutiable at the rate of 25 percent ad valorem under item 945.69, TSUS.

EFFECTIVE DATE: Ninety days after publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202–566–2938.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a notice published in the Federal Register on September 2, 1975 (40 F.R. 40190), and modified on October 10, 1975 (40 F.R. 47806), Customs announced that it was reviewing its practice concerning the tariff classification of cab chassis (consisting of frames, suspension

systems, wheels, engines, steering mechanisms, and cabs) without bodies, having very limited cargo carrying capacity in their condition as imported. This action was taken after the contention was advanced that cab chassis should be classified under the provision for automobile trucks valued at $1,000 or more, in item 692.02, TSUS (19 U.S.C. 1202), dutiable at the rate of 25 percent ad valorem under item 945.69, TSUS, rather than under the provision for chassis, bodies (including cabs) and parts, in item 692.20, TSUS.

After a review of the comments submitted in response to the notice, Customs concluded that the existing practice of classifying cab chassis was correct and should not be changed.

Following Customs decision in this matter, the General Accounting Office (GAO), at the request of the Committee on Ways and Means, U.S. House of Representatives, examined Customs classification practice regarding imported cab chassis. The report subsequently issued by the GAO noted that while it was difficult to conclude that the current classification practice was clearly wrong, the GAO was of the opinion that the practice was questionable (Report by the Comptroller General of the United States, GGD 79–19, Dec. 13, 1978). After reviewing the GAO report, in January 1979, the Treasury Department reaffirmed the correctness of the existing practice of classifying imported cab chassis as parts. The International Trade Commission (ITC) subsequently released a report commenting on the GAO study (Assessment of the December 13, 1978, Report of the Comptroller General of the United States, May 18, 1979). The ITC report concluded that the present cab chassis classification practice was "clearly wrong."

The Customs practice of classifying cab chassis as chassis was based in large part on the determination that an essential part of a truck was missing, following the opinion of the U.S. Court of Customs and Patent Appeals in *Authentic Furniture Products, Inc.* v. *United States*, 61 CCPA 5, C.A.D. 1109 (1973). However, in June 1979, that court issued a decision which expressly overruled the majority rationale in *Authentic Furniture (Daisy-Heddon, Div. Victor Comptometer* v. *United States*, C.A.D. 1228 (1979)).

In *Daisy-Heddon*, the Court stated:

> * * * The result in *Authentic Furniture Products* does not merely depend on the "essential" nature, be it functional or commercial, of the omitted side rails. It is abundantly clear from the opinion of the Customs Court, which was approved by this court, that the basis of the decision in that case was that "it is the determination of this court that the importations do not constitute a substantially complete article." (68 Cust. Ct. at 215, 343 F. Supp. at 1380.) Such a determination does not depend merely on the presence or absence of an "essential" part.
>
> There are several factors which may come into play in the

> determination of whether an article is substantially complete. In a case such as this, where the article is incomplete due to the omission of one or more parts, as opposed to where an article is incomplete because the material which comprises the article is in need of further processing, the following factors can be relevant: (1) Comparison of the number of omitted parts with the number of included parts; (2) comparison of the time and effort required to complete the article with the time and effort required to place it in its imported condition; (3) comparison of the cost of the included parts with that of the omitted parts; (4) the significance of the omitted parts to the overall functioning of the completed article; and, (5) trade customs, i.e., does the trade recognize the importation as an unfinished article or as merely a part of that article. This list of factors is not exhaustive; it must be recognized that fewer than all of the above factors, or additional factors, may come into play depending on the particular importation. The outcome of each case will always depend on the particular merchandise involved. It would be oversimplification of an essentially difficult juridical problem, often involving a determination of congressional intent, for us to attempt to provide anything more than guidelines for the trier of fact to follow in assessing a given case. * * *

On October 17, 1979, a general notice was published in the Federal Register (44 F.R. 59984) advising that, in view of the decision in *Daisy-Heddon*, Customs was reconsidering its practice of classifying imported cab chassis under the provision for bodies (including cabs) and chassis in item 692.20, TSUS.

As part of this review, Customs requested comments concerning the application of *Daisy-Heddon* to the tariff classification of cab chassis. The comments were to be directed primarily to the following issues:

(1) Are the five factors cited by the Court in *Daisy-Heddon* applicable to the tariff classification of cab chassis or should other factors or expressions of legislative intent govern?

(2) If the five factors are applicable, what manner should they be applied? (Factual information regarding the number and relative value of parts involved may be relevant to this question.)

(3) Does the opinion of the Court in *Daisy-Heddon* require a finding that cab chassis should be classified under the superior heading "Motor vehicles (except motorcycles) for the transport of persons or articles"?

(4) If so, should they be classified under the inferior heading "Automobile trucks valued at $1,000 or more, and motor buses: Automobile trucks" (692.02, TSUS) or as "Other" (692.10, TSUS):

Comments were to have been received on or before December 17, 1979. However, in response to a request for an extension, the time for submission of comments was extended to January 31, 1980, by notice published in the Federal Register on December 14, 1979 (44 F.R. 72699).

COMMENTS

In response to the notice, comments were received from 34 domestic and foreign manufacturers, foreign governments, trade associations, labor unions, law firms, and members of the public and Congress. In general, domestic producers and the United Auto Workers Union argued for reclassification of cab chassis as unfinished trucks, whereas importers argued that the present classification was correct.

CHANGE OF PRACTICE

After careful consideration of all comments received Customs has concluded that the present practice of classifying cab chassis as chassis under item 692.20, TSUS, is clearly wrong with respect to lightweight cab chassis. These imports will be reclassified as unfinished automobile trucks, pursuant to general interpretative rule 10(h) of the TSUS and the Court of Customs and Patent Appeals decision in *Daisy-Heddon, supra*. The reasons for this decision are set forth below.

Cab chassis or chassis cabs have been defined as "an incomplete vehicle, with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions" (40 F.R. 45847, Oct. 3, 1975). Chassis, in contrast, are "the basic operating motor vehicle including engine, frame, and other essential structural and mechanical parts but exclusive of body and all appurtenances for the accommodation of driver, property, or passengers, appliances, or equipment related to other than control" (Society of Automotive Engineers, Nomenclature Standard SAE J687c). However, "If a cab or cowl is included, the designation shall be motor vehicle chassis with cab or cowl" (Id).

Imported cab chassis vary from lightweight cab chassis that can be driven "as is" as a passenger vehicle, or converted in a few minutes for a small percentage of total manufacturing cost into a pickup truck, to heavy-duty, cab over engine cab chassis that may require the installation of thousands of dollars of additional equipment before they can be used.

We believe it appropriate to apply the five decisional factors set forth by the Court of Customs and Patent Appeals in the *Daisy-Heddon* opinion to determine the classification of cab chassis imports.

The court in *Daisy-Heddon* was of the view that in cases where the article is incomplete due to the omission of one or more parts, as opposed to where an article is incomplete because the material which comprises the article is in need of further processing, the five decisional factors listed above are relevant. As is discussed below, we have found no reason to deviate from that approach in this case.

In past decisions maintaining the present practice, some weight

320-978 O - 80 - 2

has been given to two indications of congressional intent to classify cab chassis as parts. These are (1) headnote 1(b) of schedule 6, subpart B of the TSUS, which provides that truck tractors, which are similar to cab chassis but with a fifth wheel added for coupling, are to be classified as parts when imported separately from truck trailers, and (2) the absence from the TSUS of the explanatory note to chapter 87 of the Brussels Tariff Nomenclature, which provides for the classification of cab chassis as motor vehicles. We do not believe these to be sufficiently strong evidence of congressional intent to outweigh the other factors present. Moreover, these factors appear to be more relevant to the classification of medium and heavyweight (as opposed to lightweight) cab chassis.

Some commentors argue that the *Daisy-Heddon* opinion, which decided whether imports were classifiable as parts of a particular article, or as that article itself, is not relevant to the classification of cab chassis as chassis or trucks because these are eo nomine tariff provisions.

We disagree with this assertion. The cab chassis at issue here are not clearly within the eo nomine provision. Under that circumstance, we deem the factors announced in *Daisy-Heddon* to be a reasonable way of distinguishing between an unfinished truck and any lesser assemblage of parts.

Many of the commentors argue that trade policy considerations should govern the classification decision herein. In our view, Customs classification decisions must be limited to interpretation of congressional intent as expressed in the Tariff Schedules and legislative history, and judicial and administrative decisions interpreting the Schedules. In other words, trade policy considerations cannot decide the legal, interpretative question: What is the proper tariff classification for a particular class of imported merchandise? This is not to say that we are unmindful of the economic consequences of classification decisions. However, it is the responsibility of other agencies of Government—specifically the Congress, and the U.S. Trade Representative—to address the results of classification decisions that are believed to be undesirable from the standpoint of trade policy.

Customs believes that the application of the *Daisy-Heddon* guidelines quoted above to the classification of lightweight cab chassis imports requires a finding that the present practice of classifying these imports as chassis or parts is clearly wrong, and that they should be reclassified under item 692.02, TSUS, as automobile trucks valued at $1,000 or more.

In comparing the number of parts omitted with those included, it was shown that there are approximately 4,500 parts in a cab chassis, but only 120 in a cargo box. It was demonstrated that the cargo box

can be assembled with minimal effort, and that its value in the case of one of the shortbed pickups was estimated to be $375 as compared with $5,100 total selling price (7 percent). While cargo boxes are significant to the functioning of the completed vehicle, most lightweight cab chassis can be used to move passengers and, to some extent, cargo without being completed. Furthermore, it was demonstrated that, according to trade custom, cab chassis are recognized as unfinished trucks. Therefore, in the future, Customs wlll classify lightweight imported cab chassis under the provision for automobile trucks valued at $1,000 or more in item 692.02, TSUS, presently dutiable at the rate of 25 percent ad valorem under item 945.69, TSUS.

With respect to other than lightweight cab chassis, the comments received lead us to conclude that the application of the *Daisy-Heddon* factors to mediumweight and heavyweight vehicles does not require a conclusion that Customs present practice is clearly wrong. The comments indicate that the number of parts added to the chassis varies depending on the changes made to the chassis after importation. Changes usually are beyond the control of the importer, who is unconcerned with alterations made to the imported cab chassis by the customer.

Following importation, chassis frequently are made into garbage trucks, beer trucks, et cetera, by parties other than the importer. They also indicate that the time and effort required to perform these changes can be significant and may take several days, or up to 40 or 50 man-hours. Regarding cost of parts, the customer's bodywork can equal more than 50 percent of the total vehicle cost. The missing parts are significant because as imported, cab chassis have no functional use other than for resale to manufacturers. Finally, it was shown that trade custom treats these imported vehicles as chassis. In view of the above evidence, Customs is prepared to review petitions, should any be received regarding the classification of mediumweight and heavyweight cab chassis on a case-by-case basis to determine whether a change in classification is warranted.

The change in practice regarding lightweight cab chassis shall be effective as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after 90 days from the date of publication of this notice in the Federal Register.

R. E. CHASEN,
Commissioner of Customs.

Approved: May 19, 1980.
RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

(T.D. 80-138)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:	
April 21–22, 1980	$0.0207
April 23–25, 1980	.0204
People's Republic of China yuan:	
April 21–23, 1980	$0.649857
April 24–25, 1980	.660415
Hong Kong dollar:	
April 21–22, 1980	$0.201045
April 23, 1980	.202840
April 24, 1980	.203666
April 25, 1980	.203874
Iran rial:	
April 21–25, 1980	Not available
Philippines peso:	
April 21–25, 1980	$0.1345
Singapore dollar:	
April 21, 1980	$0.451773
April 22, 1980	.451060
April 23, 1980	.454545
April 24, 1980	.461255
April 25, 1980	.461894
Thailand baht (tical):	
April 21–25, 1980	$0.0490
Venezuela bolivar:	
April 21–25, 1980	$0.2329

(LIQ-3-TRODE)

Dated: May 16, 1980.

CHESTER R. KRAYTON,
Director, Duty Assessment Division.

(T.D. 80–139)

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Brazil cruzeiro, People's Republic of China yuan, Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical) and Venezuela bolivar.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruzeiro:	
April 28, 1980	$0.0205
April 29–May 2, 1980	.0204
People's Republic of China yuan:	
April 28, 1980	$0.660415
April 29–May 2, 1980	.663746
Hong Kong dollar:	
April 28, 1980	$0.205550
April 29, 1980	.204290
April 30, 1980	.203459
May 1, 1980	.202716
May 2, 1980	.202143
Iran rial:	
April 28–May 2, 1980	Not available
Philippines peso:	
April 28–May 2, 1980	$0.1345
Singapore dollar:	
April 28, 1980	$0.460299
April 29, 1980	.457247
April 30–May 1, 1980	.456204
May 2, 1980	.456621
Thailand baht (tical):	
April 28–May 2, 1980	$0.0490
Venezuela bolivar:	
April 28–May 2, 1980	$0.2329

(LIQ-3-TRODE)

Dated: May 16, 1980.

CHESTER R. KRAYTON,
Director, Duty Assessment Division.

(T.D. 80–140)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80–103 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:	
April 21, 1980	$0.075815
April 22, 1980	.075415
April 23, 1980	.076453
April 24, 1980	.077190
April 25, 1980	.077220
Belgium franc:	
April 21, 1980	$0.033613
April 22, 1980	.033501
April 23, 1980	.034294
April 24, 1980	.034352
April 25, 1980	.034483
Denmark krone:	
April 21, 1980	$0.173491
April 22, 1980	(1)
April 23, 1980	.175469
April 24, 1980	.175346
April 25, 1980	.175623
France franc:	
April 23, 1980	$0.235128
April 24, 1980	.235933
April 25, 1980	.236546
Germany deutsche mark:	
April 21, 1980	$0.540979
April 22, 1980	.537057
April 23, 1980	.548546
April 24, 1980	.549602
April 25, 1980	.551572

Ireland pound:	
April 21, 1980	$2.0190
April 22, 1980	2.0200
April 23, 1980	2.0360
April 24, 1980	2.0445
April 25, 1980	2.0450
Italy lira:	
April 23, 1980	$0.001168
April 24, 1980	.001175
April 25, 1980	.001178
Netherlands guilder:	
April 21, 1980	$0.491884
April 22, 1980	.489476
April 23–24, 1980	.498753
April 25, 1980	.501002
Sweden Krona:	
April 24, 1980	$0.233918
April 25, 1980	.234192
Switzerland franc:	
April 21, 1980	$0.580046
April 22, 1980	.573394
April 23, 1980	.588582
April 24, 1980	.588062
April 25, 1980	.590319
United Kingdom pound:	
April 23, 1980	$2.2690
April 24, 1980	2.2635
April 25, 1980	2.2735

[1] Rate did not vary this date. Use quarterly rate.

(LIQ)-3-TRODE)

Dated: May 19, 1980.

CHESTER R. KRAYTON,
Director, Duty Assessment Division.

(T.D. 80-141)

Foreign Currencies—Variances From Quarterly Rate

Rates of exchange based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New

York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 80–103 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Austria schilling:	
April 28, 1980	$0.078003
April 29, 1980	.077700
April 30–May 1, 1980	.077760
May 2, 1980	.076628
Belgium franc:	
April 28, 1980	$0.034686
April 29, 1980	.034542
April 30, 1980	.034447
May 1, 1980	.034435
May 2, 1980	.034153
Denmark krone:	
April 28, 1980	$0.177494
April 29, 1980	.177620
April 30, 1980	.177368
May 1, 1980	.177211
May 2, 1980	.175285
Finland markka:	
April 28, 1980	$0.268276
April 29, 1980	.269107
April 30, 1980	.269034
May 1, 1980	.268817
May 2, 1980	.269034
France franc:	
April 28, 1980	$0.238265
April 29, 1980	.237982
April 30, 1980	.237869
May 1, 1980	.237727
May 2, 1980	.235433
Germany deutsche mark:	
April 28, 1980	$0.556081
April 29, 1980	.556638
April 30, 1980	.555556
May 1, 1980	.554939
May 2, 1980	.548396
India rupee:	
April 28–May 2, 1980	$0.1266

Ireland pound:	
April 28, 1980	$2.0620
April 29, 1980	2.0570
April 30, 1980	2.0510
May 1, 1980	3.0530
May 2, 1980	2.0320
Italy lira:	
April 28, 1980	$0.001181
April 29, 1980	.001182
April 30, 1980	.001180
May 1, 1980	.001182
May 2, 1980	.001172
Japan yen:	
April 28, 1980	$0.004144
April 29, 1980	.004179
April 30, 1980	.004178
May 1, 1980	.004158
May 2, 1980	.004161
Netherlands guilder:	
April 28, 1980	$0.503271
April 29, 1980	.502008
April 30, 1980	.502134
May 1, 1980	.501505
May 2, 1980	.494438
Norway krone:	
April 28, 1980	$0.202593
April 29, 1980	.202778
April 30, 1980	.202675
May 1, 1980	.202429
May 2, 1980	.201816
Portugal escudo:	
April 28, 1980	$0.020284
Sweden krona:	
April 28, 1980	$0.235377
April 29, 1980	.237530
April 30, 1980	.237643
May 1, 1980	.237248
May 2, 1980	.234192
Switzerland franc:	
April 28, 1980	$0.598265
April 29, 1980	.598802
April 30, 1980	.599700
May 1, 1980	.599520
May 2, 1980	.589971

320-978 O - 80 - 3

United Kingdom pound:	
April 28, 1980	$2.2830
April 29, 1980	2.2695

(LIQ-3-TRODE)

Dated: May 19, 1980.

CHESTER R. KRAYTON,
Director, Duty Assessment Division.

U.S. Customs Service

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: May 19, 1980.

SALVATORE E. CARAMAGNO,
Acting Director, Office of Regulations and Rulings.

(C.S.D. 80-51)

Entry: Merchandise Appearing on a Single Invoice When Different Dates of Exportation Are Invoived

Date: July 23, 1979
File: ENT-1-01-R:E:E
710719 MK

This ruling concerns the authority of a district director to require that merchandise listed on a single invoice be separately listed on the entry or entry summary form.

Issue.—May a district director legally require that merchandise listed on a single invoice (special summary steel invoice or special customs invoice) be listed separately on the entry or entry summary form, when multiple dates of exportation are involved?

Facts.—Steel, intended for delivery to the United States, is frequently exported from one country over a period of time, and consolidated in a second country, where it is placed aboard an ocean vessel for shipment to the United States. Each consolidated shipment is covered by one or more special summary steel invoices. Currently, a Customs office requires that bundles with different dates of exportation be separately identified and listed on the entry or entry summary.

Law and analysis.—General statistical headnote 1(a)(viii), Tariff Schedules of the United States, requires that the entry or withdrawal form must give the date of exportation. Section 141.61(e)(1), Customs Regulations, provides that for each class of merchandise within each

invoice, information required by the general statistical headnotes must be shown on the entry and withdrawal forms. Section 141.61(a) of the regulations requires that all information be clearly set forth on the entry papers.

Holding.—The cited provisions of law and regulation provide a district director with the authority to require that merchandise listed on a single invoice be separately identified and listed on entry, or entry summary form.

(C.S.D. 80–52)

Marking: Country-of-Origin Marking of Bookmatches

Date: July 23, 1979
File: MAR 2–05–R:E:E
710247 DB

This ruling concerns the country-of-orign marking on bookmatches made in Canada.

Issues.—(1) May the abbreviation "Can." or "Cana." be used to indicate Canada as the country of origin for purposes of 19 U.S.C. 1304?

(2) In the case of bookmatches is marking behind the matches, referred to as the comb, sufficiently conspicuous?

Facts.—An importer proposes to import bookmatches from Canada. The bookmatches will be marked to indicate Canada as the country of origin. The importer would like to abbreviate Canada to "Can." or "Cana." to indicate the country of origin which he believes in no way would be misleading as to the country of origin to the ultimate purchaser.

Law and analyses.—Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304) provides in general that all articles of foreign origin imported into the United States shall be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States. The Customs Service has held that the ultimate purchaser of bookmatches is the ultimate recipient.

As a general rule, abbreviations are not acceptable unless they clearly indicate the country of origin (19 CFR 134.45(b)).

Holding.—Customs is of the opinion that the abbreviation "Can." or "Cana." is not an acceptable marking for goods from Canada. The abbreviation "Can." was held unacceptable in abstract No. 15145, 6 CCR 498 (1941), and the Customs Service remains of the view that it is unacceptable.

The location of the country-of-origin marking behind the comb of matches is not considered to be conspicuous, as it is not readily visible to an ultimate purchaser. Marking on the outside of the cover in a legible and conspicuous manner would be acceptable.

(C.S.D. 80–53)

Country-of-Origin Marking: Watch Dials Designed To Be Blank

Date: July 24, 1979
File: MAR–2–05–R:E:E
710382 HS

This ruling concerns country-of-origin marking for watch dials.

Issue.—(1) Whether a watch dial may be excepted from the specific marking requirements set forth in the Tariff Schedules of the United States when the dial of the watch is to be completely blank according to the design concept.

(2) Whether it is permitted to use the words "temperature adjusted" instead of the word "unadjusted" on watch movements.

Facts.—A foreign company manufactures watches which will, according to the design concept, have a blank dial; only the hands of the watch will appear on the dial. The blank dial is an integral part of the design concept. The artist has not placed any decoration or ornamentation on the watch and will not permit the name of the country of manufacture to be placed on the face of the dial. The company wishes to mark the name of the country of manufacture of the dial on the back of the dial.

The company is also interested in marking the watch movements of the watch with the words "temperature adjusted."

Law and analysis.—(1) Schedule 7, part 2, subpart E, headnote 4, Tariff Schedules of the United States (1978) sets forth special marking requirements for watches. According to these requirements, dials are to be marked to show the name of the country of manufacture. If the imported dial is attached to any of the other articles provided for in this part of the Tariff Schedules, the marking is required to be placed on the face of the dial in such a manner as not to be obscured by any part of the watchcase.

The special marking requirements for watches are strictly construed. No dial provided for in schedule 7, part 2E, Tariff Schedules of the United States, shall be released for consumption until marked in exact compliance with the requirements of headnote 4 of that subpart.

In the present instance, a complete watch will be imported and the special marking requirements clearly require that the dial of the watch

be marked with its country of origin on it face. Accordingly, the watch in question will not be permitted entry into the country with a marking which shows the name of the country of manufacture on the back of the dial.

(2) The special marking requirements of schedule 7, Tariff Schedules of the United States also require that watch movements be marked on one or more of the bridges or top plates to show in Arabic numerals and in words, the number and classes of adjustments, or if unadjusted, the word "unadjusted." Again, the special marking requirements are strictly construed. Accordingly, under the special marking requirements it is not permitted to use the words "temperature adjusted" instead of the word "unadjusted." Terminology other than "unadjusted" would be misleading to the ultimate purchaser.

Holding.—The special marking requirements set forth in schedule 7, part 2, subpart E, headnote 4, Tariff Schedules of the United States are strictly construed. Accordingly, a watch dial may not be excepted from the marking requirements because the design concept is for the watch dial to be blank, and the terminology "temperature adjusted" may not appear on the watch movements instead of the word "unadjusted."

(C.S.D. 80–54)

Bonds: Use of General Term Bond by Broker Importing for Own Account

Date: July 25, 1979
File: BON–1–R:CD:D
210738 MR

Issue.—May an importer who is also licensed as a customhouse broker use a general term bond, Customs form 7595, for importations for which he is the importer of record.

Facts.—A firm acts as an importer of steel. The firm is also licensed as a customhouse broker in two ports. The firm wishes to execute a general term bond, Customs form 7595, to cover those importations for which it is the importer of record. The firm will not be acting as a broker for these particular entries and it intends to hire a broker in those ports where entries are made.

Law and analysis.—Customhouse brokers are normally not permitted to use general term bonds because of the possibility of unforeseeable cumulative liability under these bonds. Since the scale of importations by a broker varies with the broker's clients, it is more difficult to

predict, on the basis of past importations, future bond liability of a broker, than it is for an importer who imports for his own account.

These considerations, however, do not hold when a customhouse broker wishes to use a general term bond to cover importations made for its own account. As long as the broker does not use the general term bond for importations for the account of another, then the broker is in the same position as any other importer who wishes to use a general term bond with respect to the problem of unforeseeable cumulative liability. Therefore, the broker should be allowed to use a general term bond to cover importations made for its own account.

Holding.—A broker may execute a general term bond, Customs form 7595, so long as its use is restricted to goods imported for its own account. The bond may not be used by the broker for goods imported for the account of another in these ports where the broker is licensed to operate.

(C.S.D. 80–55)

Vessel Entrance: Whether Foreign-Flag Fishing Vessels Have "Arrived in Distress" When Foreign Countries Have Refused Them Permission To Land Their Catch

Date: July 26, 1979
File: VES–7–03–R:CD:C
104118 MKT

This ruling concerns whether two foreign-flag fishing vessels arrive in distress and may unlade their catch pursuant to section 4.96(g), Customs Regulations (19 CFR 4.96(g)).

Issues.—(1) Whether two foreign-flag fishing vessels "arrive in distress" for the purposes of section 4.96(g), Customs Regulations, when they have been denied permission to land their catch by several foreign countries and when once in a United States port they become subject to conflicting claims of ownership, lose one master, are kept in port by an uncontrollable crew, and are unable to purchase bunker fuel.

(2) Whether the vessels described above, by the exercise of due diligence, may transport their catch to a foreign port without spoilage.

Facts.—Two fishing vessels formerly owned and operated by Nicaraguan interests transferred their flags to the Cayman Islands. During the week of July 15, 1979, these vessels arrived in the port of Los Angeles, Calif., to land their catch taken aboard on the high seas. The vessels seek to unload in the United States because Mexico, Nicaragua, Panama, and Costa Rica have refused the vessels permission

to unload. The inquirer states that the vessels will not attempt to depart or transship their catch on the high seas because:

1. The Sandinist forces or a local group of anti-Somoza demonstrators took physical charge of the vessel, claiming ownership.

2. Members of the crew refused to move the ship because they have not been paid for the fish they caught.

3. The master (a Peruvian) of one of the vessels has left the ship and returned to his home in Peru.

4. It is not known how much fuel is aboard the vessel and for how long a period the auxiliaries will be maintained to protect the fish that is highly perishable.

5. The only control over the crew is through the U.S. master who is aboard one of the vessels.

6. No fuel is available for purchase due to the shortage and no one (Star-Kist Foods) will guarantee payment.

7. You feel very strongly that the crew, made up of U.S. citizens, Peruvians, Nicaraguans, and other nationalties are likely to become overzealous and cause a serious international incident. These fears relate to the crew as well as the vessels.

You contend that these circumstances constitute a serious distress situation. You state that you have advanced considerable sums for the expenses of the vessels and you will suffer a large economic loss if the vessels are not permitted to unload. You further state that you will still suffer a significant loss even if the vessels are permitted to unload in the United States. You express doubt that the crew will remain on board the vessels once they are unloaded and that this will further aggravate the situation.

Law and analysis.—(1) Title 46, United States Code, section 251, prohibits, except as otherwise provided by treaty or convention, a foreign-flag vessel from landing in a port of the United States its catch of fish taken on board the vessel on the high seas.

However, section 4.96(g), Customs Regulations (19 CFR 4.96(g)), permits a nonconvention fishing vessel which arrives in distress to secure supplies, equipment, or repairs, but prohibits the vessel from landing its catch of fish unless the vessel's master, or other authorized representative of the owner, shows to the satisfaction of the District Director that it will not be possible, by the exercise of due diligence, for the vessel to transport its catch to a foreign port without spoilage.

When the arrival of a vessel in distress is not apparent, the Customs Service has previously relied upon a verification by the U.S. Coast Guard that the vessel has indeed arrived in distress. The Coast Guard limits this determination to whether the arrival is a result of a force majeure (33 CFR 124.10(a)(3), 124.10(b)(6), 124.14(d)). We have

contacted the Captain of the Port of Los Angeles, U.S. Coast Guard, who has stated that these vessels did not "arrive in distress."

The fifth circuit has found that in the ordinary meaning of the phrase:

> A vessel is in distress when in a state of danger or necessity, "as from want of provisions or water," etc. (Websters Dictionary); or "in a situation of misfortune or calamity, as a steamer in distress" (Standard Dictionary). A vessel, of course, is also in distress when wrecked, and needing salvage service; * * * . *The Saehelm*, 99 F. 456, 458 (5th Cir. 1900).

Examining the facts at hand, we find that the vessels in this case did not arrive in distress. The vessels had been denied the right to unlade their catch by several foreign countries but not the right to enter their ports to secure any necessary supplies, equipment, or repairs. Furthermore, there is no indication that the vessels arrived in the United States in an unseaworthy condition or in need of any supplies, equipment, or repairs. However, once in port, the vessels became subject to conflicting claims of ownership and control of the crew was lost. The distress situation is one of economic hardship to the owners of the catch and the vessels rather than of any peril to the vessel or crew which would constitute distress for the purposes of section 4.96(g).

Further, the inquirer does not allege that it is the master or authorized agent of the owner, the appropriate party to request the landing of the catch. The inquirer alleges no interest in the vessel and is concerned only with its right to the catch. The fact that Sandinist forces or a local group of demonstrators took physical charge of the vessel, claiming ownership, indicates that the actual ownership of the vessel is in dispute.

(2) Since we do not consider the vessels to have arrived in distress, we do not need to decide whether or not, by due diligence, the catch could be transported to a foreign port without spoilage.

Holding.—(1) Two foreign-flag fishing vessels do not arrive in distress for the purposes of section 4.96(g), Customs Regulations, when they have been denied permission to land their catch by several foreign countries and when once in a U.S. port they become subject to conflicting claims of ownership, lose one master, are kept in port by an uncontrollable crew, and are unable to purchase bunker fuel.

(2) Since we do not consider the vessels to have arrived in distress, we do not need to decide whether or not, by the exercise of due diligence, the catch could be transported to a foreign port without spoilage.

Effect on other rulings.—None.

320-978 O - 80 - 4

(C.S.D. 80–56)

Entry: Maintenance of Import Records by Importer

Date: July 26, 1979
File: BRO–1–01–R:E:E
710625 M

This ruling involves a request by an international corporation for permission to maintain certain of its import records outside the United States.

Issue.—Would the retention by the importer of certain of his records outside of the United States comply with the record retention requirements of section 508, Tariff Act of 1930, as amended?

Facts.—An international corporation which has its headquarters located outside of the United States and engaged in retail merchandise in the United States, maintains certain of its import records, such as purchase orders, payment authorizations and letter of credit documentation, in its home office outside the United States. This corporation has a New York office maintained with resident personnel having full authority to order the home office to promptly forward any records maintained by the home office, pursuant to an administrative request or a summons.

Law and analysis.—Section 104 of Public Law 95–410 added a new section to the Tariff Act of 1930 numbered section 508 (19 U.S.C. 1508) which requires any owner, importer, consignee, or agent who imports or who knowingly causes to be imported any merchandise into the Customs territory of the United States to maintain certain import records.

As pointed out in item 13 of the preamble to T.D. 79–159, Customs does not believe that maintaining records outside the United States is conducive to proper enforcement of section 508 of the Tariff Act. In order that records pertaining to the importation of merchandise may be readily available for inspection and to carry out the intent of section 508, Customs is of the opinion that records required to be maintained by section 508 must be located physically in the United States.

Holding.—Records which an importer is required to maintain pursuant to section 508 of the Tariff Act of 1930, as amended, must be located physically in the United States.

(C.S.D. 80–57)

Marking: Country-of-Origin Marking Using Words "Made In/Fait a" When the Marking Is in Close Proximity to a U.S. Place Name

Date: July 26, 1979
File: MAR–1–01 R:E:E
710530 MC

This ruling concerns country-of-origin marking of imported textile fabric garments that bear both the English and the French words "Made In/Fait a."

Issue.—Whether the marking requirements have been sufficiently complied with when the dual language designation "Made In/Fait a Hong Kong" is employed.

Facts.—Garments manufactured in Hong Kong are to be imported into both the United States and Canada. In order to permit marketing of the product in both countries, the dual language designation "Made In/Fait a Hong Kong" appears on the lower right-hand corner of the label, less than 1 inch away from the company name, which includes the word "California."

Law and analysis.—Section 134.46 of the Customs Regulations requires that if "the name of any city or locality in the United States" appears on any imported article, "there shall appear, legibly and permanently, in close proximity to such word, letters or name, and in at least a comparable size, the name of the country of origin preceded by 'Made in,' 'Product of,' or other words of similar meaning." The purpose of these requirements is to avoid the possibility of misleading the ultimate purchaser.

We are of the opinion that the words "Made In/Fait a" comply with the requirements of section 134.46. The dual designation includes the English words and thus should not be confusing to the ultimate purchaser.

Holding.—Country-of-origin markings which employ the dual language designation "Made In/Fait a" satisfy the marking requirements.

(C.S.D. 80–58)

Drawback: Manufacture or Production Defined; 19 U.S.C. 1313

Date: July 26, 1979
File: DRA–1–R:CD:D MM
210393

Issue.—Whether the insertion of sunglass lenses into eyeglass frames constitutes a manufacture or production for drawback purposes under 19 U.S.C. 1313.

Facts.—Metal and plastic eyeglass frames of various styles are imported in bulk. Sunglass lenses of American manufacture are inserted into the frames after an edging process of deburring and placing a ridge on the lens edge. Insertion of the lens into the plastic frames is accomplished by physically forcing the lens into the frame. In the case of the metal frames, a small setscrew is loosened, the lens inserted, and the screw retightened. The completed sunglasses are then cleaned, packed, and exported.

Law and analysis.—Title 19, United States Code, section 1313, the drawback law, provides for the allowance of drawback upon the exportation of articles which have been maufactured or produced in the United States with the use of imported or substituted merchandise of the same kind and quality.

Manufacture or production has been defined as a process which changes or transforms an article into a new and different article having a distinctive name, character or use. The requirements that a manufactured article have a different character or use are satisfied when an imported article which is not suited for commercial use is further manufactured into one that is suited for commercial use. In this case, the frames are not suited for commercial use when imported whereas the sunglasses are so suited when exported.

Holding.—The insertion of lenses into metal and plastic frames constitutes a manufacture or production and drawback is payable under 19 U.S.C. 1313 upon compliance with the applicable laws and regulations.

(C.S.D. 80–59)

Country-of-Origin Marking: Traveler's Checks

Date: July 26, 1979
File: MAR–2–05–R:E:E
710855 MC

This ruling concerns the marking of traveler's checks.

Issue.—Whether traveler's checks are considered articles within the meaning of the Tariff Act of 1930 (19 U.S.C. 1304), and are accordingly subject to country-of-origin marking requirements.

Facts.—Traveler's checks, printed in Canada, are planned to be imported into the United States. Each check is to be preprinted with the bank name, the signature of an officer, and the designated dollar value. The traveler's checks are to be sold to the public in booklets containing a plurality of checks. A ruling is sought to resolve whether words such as "Printed in Canada" are required to appear on the checks.

Law and analysis.—Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that "except as hereinafter provided, every article of foreign origin * * * imported into the United States shall be marked * * * to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article." Sections 134.31 through 134.36 of the Customs Regulations provide exceptions to marking requirements.

In addition to the exceptions listed in the above quoted regulations, several other items have been held not to be articles within the meaning of 19 U.S.C. 1304 and thus not subject to the marking requirements. Money is a chief example of such an item. Coins and currency have not been considered to be included in the kinds of articles within the statutory purview of section 1304. They have been referred to as intangibles or instruments of commerce, distinguishable from goods, wares, and merchandise which are articles subject to the marking requirements.

We are of the opinion that travelers checks are comparable to currency and are not articles within the meaning and intent of section 1304. Travelers checks have been classified in T.D. 78–368 as intangibles or evidences of value. Similar to currency, travelers checks evidence a legally enforceable right to specific value. As such they can be easily distinguished from the merchantable commodities considered articles. Travelers checks represent monetary value, yet unlike articles they have no inherent value themselves.

Holding.—Travelers checks are not articles within the meaning of 19 U.S.C. 1304. Therefore, they are not subject to country-of-origin marking requirements.

(C.S.D. 80–60)

Aircraft: Foreign Clearance; Scheduled versus Non-Scheduled Flights

Date: July 26, 1979
File: AIR–4–02–R:CD:C
104050 DR

This ruling concerns the Customs procedures to be followed where a scheduled aircraft departs from a U.S. port for a foreign port via another U.S. port.

Issue.—Whether an aircraft of a scheduled airline departing from the U.S. port of origin of a flight for a foreign port via another U.S. port with passengers for the foreign port is required to obtain clearance at the port of origin of the flight.

Facts.—Aircraft depart on scheduled flights from Anchorage, Alaska, to Whitehorse, Yukon Territory, via Fairbanks, Alaska. The District Director at Anchorage asks whether clearance from

Anchorage for Whitehorse is required in view of a ruling from the region that in the case of a nonscheduled flight, a permit to proceed is required. The region indicates that, pursuant to sections 6.3, 6.5, and 6.8 of the Customs Regulations, a clearance would be required in the case of a scheduled flight.

Law and analysis.—Section 6.5(a) of the Customs Regulations provides, with respect to the circumstances involved in the inquiry, that an aircraft operated by a scheduled airline departing for a foreign place must obtain clearance if the aircraft is beginning the flight in that area (State). Subsection (c) requires that the clearance be obtained at the Customs port of entry at or nearest each place at which passengers or merchandise are taken on board for discharge beyond the area, such clearance to be limited to the passengers and merchandise taken aboard at that place.

Holding.—Where an aircraft begins a scheduled flight at Anchorage, Alaska, for Whitehorse, Yukon Territory, via Fairbanks, Alaska, section 6.5 of the Customs Regulations requires the aircraft to obtain at Anchorage a clearance for Whitehorse for any passengers or merchandise laden at Anchorage for Whitehorse. The aircraft will similarly obtain at Fairbanks a clearance for Whitehorse for any passengers or merchandise laden at Fairbanks.

(C.S.D. 80–61)

Carrier Control: Whether a Foreign-Flag Vessel May Engage in Salvage and Removal of Drilling Rig Located Above the Outer Continental Shelf

Date: July 27, 1979
File: VES–5–13/VES–10–01
VES–10–02–R:CD:C
104099 JL

Reurtel, July 5, 1979, use of foreign-flag vessel in salvage operations and removal of drilling rig (name) located on Outer Continental Shelf (OCS) off Louisiana coast prohibited by 46 U.S.C. 316(d). See T.D. 54281(1).

(C.S.D. 80–62)

Duty Assessment: When an IIT Container is Entitled to Duty-Free Entry

Date: July 27, 1979
File: BOR–7–07–R:CD:C
104011 JM

This ruling concerns the duty-free entry into the United States of certain containers.

Issues.—(1) Are containers, qualified as instruments of international traffic (IIT) under the Customs Convention on Containers, 1972, generally entitled to entry fee of duty upon arrival in the United States?

(2) Are certain containers, manufactured in Canada and sold to a U.S.-based leasing company, to be leased for use in both domestic and international traffic, entitled to free entry as IIT when being entered through Customs?

Facts.—A Canadian company manufactures containers to be used on freighter versions of aircraft. This manufacturer sells containers to an international container leasing company, headquartered in the United States, which in turn plans to lease the containers to airlines for use in both international and domestic traffic. The United States purchaser of the containers has asked the manufacturer to domesticate the containers, i.e., pay duty on the containers, in order that the containers may be used for domestic traffic within the United States. The Canadian company believes the containers are entitled to free entry as IIT and a ruling on the matter has been requested.

Law and analysis.—The Customs Convention on Containers, 1956 (T.D. 69–68), to which the United States subscribed in 1968, provides in chapter II, article 2, for the temporary admission of containers free of duties "when they are imported loaded to be reexported either empty or loaded, or imported empty to be reexported loaded." Article 2 also provides in part:

> Each contracting party shall retain the right to withhold these facilities in the case of containers which are imported on purchase or otherwise taken into effective possession and control by a person resident or established in its territory.

Chapter II, article 6, of this convention states:

> The procedure for the temporary admission of containers and component parts free of import duties and import taxes shall be governed by the regulations in force in the territory of each contracting party

The Customs Convention on Containers, 1972, which when effective will replace the 1956 convention and which was ratified by the Senate on September 15, 1976, is not yet in force pending enactment of implementing legislation. While it would be premature to comment on the 1972 convention prior to its becoming effective, the 1972 convention does contain limiting provisions similar to those in the 1956 convention.

Under the circumstances, and as provided by the Customs Convention on Containers, 1959, we must look to the laws and regulations of the United States to determine whether containers, qualified as IIT, are generally entitled to entry free of duty upon arrival in the United States.

Section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322(a)), provides that vehicles and other IIT shall be accorded the customary exceptions from the Customs laws to the extent and under such terms as the Secretary of the Treasury may prescribe, Senate Report 632, 83d Congress (1953) states that section 322 was added to grant to international traffic generally recognized customary exceptions from Customs requirements, but not to change the existing customary exceptions set out in the document, *United States Import Duties*, 1952 (p. 269). These exceptions are reflected in part by sections 10.41, 10.41a, and 10.41b, Customs Regulations (19 CFR 10.41, 10.41a, and 10.41b).

To qualify as an IIT within the meaning of 19 U.S.C. 1322(a), an article must be used as a container or holder, must be substantial, must be capable of repeated use and must be used in significant numbers in international traffic. The requirements are in agreement with the definition of container as set out in chapter I, article 1, Customs Convention on Containers, 1959, the pertinent portion of which appears as footnote 38a to section 10.41a, Customs Regulations.

Under section 10.41a, Customs Regulations, a container generally is considered to be engaged in international traffic when it arrives in the United States with cargo for delivery in the United States or arrives empty to lade cargo for foreign destinations. A container engaged in international traffic may be admitted without entry or payment of duty upon compliance with section 10.41a, Customs Regulations, but becomes subject to treatment as imported merchandise requiring the filing of a regular Customs entry and payment of applicable duties if withdrawn from international traffic.

Holding.—(1) Under the Customs Convention on Containers and the laws and regulations now in effect in the United States, a container otherwise qualified as an IIT may be released without entry or payment of duty only when arriving in the United States with cargo for delivery in the United States or empty to lade cargo for foreign destinations.

(2) The containers in the subject case, purchased by a U.S.-based leasing company, are arriving as imported merchandise rather than as containers in use in international traffic and as such are subject to Customs entry and payment of any applicable duty.

(C.S.D. 80-63)

Drawback: Obligation To Keep Required Records; Section 22.4(g), Customs Regulations

Date: July 27, 1979
File: DRA-1-09-R:CD:D B
210506

Issue.—This is an appeal from the denial of drawback. No clear legal issue is presented, since, in effect, the inquirer is requesting Customs to waive the requirements of the drawback law and regulations, an action which Customs has no authority to do. However, there is possibly a solution to the inquirer's problem.

Facts.—The inquirer is a shipbuilding company which built two oceangoing tugs for a foreign account, using materials and equipment supplied by the foreign account. The inquirer has a drawback contract approved under section 1313(g), title 19, United States Code.

The inquirer stated in its drawback proposal (also known as a drawback statement) that "Withdrawal dates will be recorded in the same manner as the receiving date." Because the inquirer did not keep the records as it had stated in its drawback proposal, drawback was denied. The inquirer appealed the denial.

There are other records referred to in the case history which indicate that the inquirer might be able to establish the basis for drawback under a revised drawback proposal.

Law and analysis.—Section 1313(g) provides for a refund of duties, less 1 percent, paid on imported materials used in the construction and equipment of vessels built for foreign account and ownership, notwithstanding such vessels may not be exported within the strict meaning of that term.

Section 22.4, Customs Regulations, sets forth the records which each manufacturer or producer will keep as to all articles manufactured or produced for exportation with drawback. Section 22.4(g), Customs Regulations, specifically provides that the builder of a vessel shall keep records provided for in section 22.4, Customs Regulations, so far as applicable, and shall file an abstract of such records with the appropriate district director in ample time prior to exportation of the vessel to enable Customs to verify these records by examination of the vessel.

Customs Service approval of a manufacturer's proposal establishes that manufacturer's entitlement to payment of drawback. When approved, the manufacturer's proposal is a contract between the manufacturer and the Customs Service. A manufacturer who complies

320-978 O - 80 - 5

with the contract terms can conduct its business operations with assurance that it will receive payment of drawback.

Conversely, a manufacturer, as in the case of this inquirer, who fails to comply with the very terms it proposed, forfeits the advantage offered by a drawback contract. A manufacturer who fails to satisfy the terms of its own drawback contract cannot demand or expect payment.

The Customs Service cannot, of course, waive the requirements of the drawback law or regulations. However, if a manufacturer makes another proposal which is in accord with the law and regulations and which it can fulfill, Customs will accept the new proposal and enter into a new drawback contract with that manufacturer.

Basically, the drawback law and regulations require in 1313(g) cases that the identity of the imported material used be maintained from the time it is imported until it leaves the country as part of a completed vessel. The exact date of use in the construction of the vessel is not required. Thus, records to show that imported steel was used to construct a vessel between January 1 and May 31, 1976, would usually be sufficient. It would not be necessary to prove, for example, that one piece of steel was used on January 10, another on January 15, etc.

Holding.—Since there seems to be no dispute that the claimant did not submit the records required by the law, the regulations, and its contract, the Regional Commissioner acted correctly in denying drawback.

Possible alternatives.—Supplementary business records maintained, for example, by a representative of the purchaser of the vessels, who is stationed during the construction period at the manufacturer's shipyard, may be adopted by the manufacturer as his own records, assuming they were prepared concurrently with the building of the vessels and were maintained in accordance with general business recordkeeping practice.

However, it is not clear whether the inquirer can prepare a new drawback proposal with the use of adopted records, which would comply with the requirements of the drawback law and regulations. A new proposal showing that the inquirer complied with the recordkeeping requirements of the drawback law and regulations would be considered by the Customs Service.

(C.S.D. 80–64)

Manipulation in Bonded Warehouses: Cutting Woolen Neckwear Into Scrap

Date: July 27, 1979
File: WAR–3–R:CD:D JB
210748

Issue.—Whether the cutting of woolen neckwear stored in a bonded warehouse so as to render the goods into scrap or rags constitutes a manipulation within the contemplation of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562).

Facts.—The importer has stored in a Customs bonded warehouse a shipment of woolen neckwear, entered into the warehouse on July 1, 1958. The entry has been properly extended until September 13, 1979. The importer now wishes to open the cartons containing the goods, in the warehouse, and cut each item of neckwear, reducing the entire shipment to rags. It is requested that this procedure be permitted as a manipulation.

Law and analysis.—19 U.S.C. 1562 provides in relevant part:

> That upon permission therefor being granted by the Secretary of the Treasury, and under Customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses * * *.

The question of what constitutes a manipulation and what a manufacture is, is thus, of considerable importance. The Supreme Court has stated the following:

> Manufacture implies a change, but every change is not a manufacture. * * * There must be a transformation; a new and different article must emerge, "having a distinctive name, character, or use." *Anheuser-Busch Brewing Association* v. *U.S.*, 207 US 556 (1908), at 562.

Under this definition the proposed operation might seem a manufacture, a distinctive name and use arguably having emerged. Nonetheless the Customs Service has taken the position that procedures such as here contemplated are manipulations, rather than manufactures.

In a Bureau letter of April 29, 1970, the opinion was expressed that the reduction to scrap of 4,178 textile looms in a bonded warehouse was a manipulation. The dismantling of trucks has been similarly approved (B/L, Feb. 16, 1978). Further, Customs Regulations provide that:

> Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such Section 562" (19 CFR 19.11(d)).

Thus, the intent of the importer to avoid payment of the higher rate of duty that would apply to his goods as neckwear, as opposed to woolen rags, is not a factor.

In light of the foregoing considerations it seems that the procedure suggested by the importer here should be permitted under section 562 (19 U.S.C. 1562) as a change in condition manipulation.

Holding.—Woolen neckwear stored in a bonded warehouse may be cut in the warehouse so as to render the goods into scrap or rags as a manipulation under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562).

(C.S.D. 80–65)

Prohibited and Restricted Importations: Whether a Mark Appearing on Imported Sportswear Is Confusingly Similar to a Registered Trademark

Date: July 30, 1979
File: TMK–3–R:E:E
710634 MC

This ruling concerns the applicability of the prohibition set forth in section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), against the importation of merchandise bearing resemblance to a registered trademark.

Issue.—Whether the mark appearing on the importer's sportswear is confusingly similar to a registered trademark such that importation of that sportswear would infringe upon the rights of the trademark owner.

Facts.—Customs is investigating whether a demand for redelivery of a shipment of sportswear should be issued. The merchandise in question includes tennis shorts, warmup jackets and tennis shirts, each bearing a mark resembling the letters "Ti." The figure appears as a blue vertical line on the left connected at the top to a blue horizontal line which extends over a vertical red line on the right. This Ti-shaped figure is placed in the white background of a blue square.

The trademark also consists of blue and red lines in a blue bordered box with white background, but in the shape of the letter "F." A horizontal red line is placed at the top of the box under which a horizontal blue line appears, connected at the far left by a vertical blue line which extends down. Color photographs of both marks and a

sample tennis shirt from the allegedly infringing merchandise were submitted for examination.

Law and analysis.—Section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526) and part 133, subpart A, of the Customs Regulations (19 CFR 133.1–133.7) provide for the recordation of trademarks with Customs for import protection. Section 133.21 of the Customs Regulations provides, in part, that:

> Articles of foreign or domestic manufacture bearing a mark or name copying or simulating a recorded trademark or trade name shall be denied entry and are subject to forfeiture as prohibited importations.

Infringement of federally registered marks is governed by the test of whether importer's use is likely to cause confusion, or to cause mistake, or to deceive. When comparing different marks to determine whether they are confusingly similar, it is important to consider the impression which the mark as a whole creates on the average reasonably prudent purchaser.

While the mark in question here is similar to the protected mark in that they are both red and blue lines in the white background of blue bordered boxes, the color and boxing are to be disregarded as factors, as they do not appear in the trademark registration. The impression created by color and boxing, while possibly confusing to the consumer, is to be given no weight in the instant analysis. Excluding these factors, we are of the opinion that the reasonably purdent purchaser of sportswear, upon viewing the merchandise in question would not be confused, in all likelihood, as to the source, connection, or sponsorship of the clothing being purchased. The submitted Ti-shaped figure bears little resemblance to the F trademark.

Holding.—Demand for redelivery should not be issued as the merchandise does not infringe within the meaning of 19 U.S.C. 1526. We are of the opinion that there would be little likelihood of confusion in this case. You may furnish both parties with a copy of this decision.

(C.S.D. 80–66)

Brokers: May a Third Party Maintain the Importer's Records Required To Be Kept by Public Law 95–410?

Date: July 30, 1979
File: BRO–1–01 R:E:E
710602 M

This ruling pertains to the eligibility of third parties to retain importer's records.

Issue.—May a third party maintain, on behalf of the importer, the importer's records required to be kept by Public Law 95–410?

Facts.—An importer proposes to enter into a contract with another party for the latter, on behalf of the importer, to maintain the importer's records required to be kept by Public Law 95–410.

Law and analysis.—Sections 104 and 105 of Public Law 95–410, among other things, added new sections to the Tariff Act numbered respectively sections 508 and 509 which pertain to recordkeeping requirements. Section 508, Tariff Act of 1930, as amended (19 U.S.C. 1508) provides that any owner, importer, consignee or agent who imports or who knowingly causes to be imported any merchandise into the Customs territory of the United States must maintain certain records. Subsection (c) of section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509(c)), in effect, provides among other things, for the summons of records (defined as statements, declarations, and documents required to be kept under sec. 508) maintained by a third party recordkeeper (who is defined as a customhouse broker, attorney, or accountant). Section 162.1a of the Customs Regulations (T.D. 79–159) sets forth a similar definition for a third party recordkeeper.

Therefore, if the third party is either a customhouse broker, attorney, or accountant, he may maintain, on behalf of the importer, the importer's records required to be kept by Public Law 95–410.

Holding.—A third party may maintain, on behalf of the importer, the importer's records required to be kept by Public Law 95–410, provided the third party is either a customhouse broker, an attorney, or an accountant.

(C.S.D. 80–67)

Drawback: Destruction of Foreign Trade Zone Restricted Merchandise for Drawback Purposes

Date: July 31, 1979
File: DRA–1–R:CD:D
210735 MR

Issue.—Whether a process which results in the creation of valuable scrap satisfies the requirement of destruction of zone restricted merchandise under section 3 of the Foreign Trade Zones Act (19 U.S.C. sec. 81c)?

Facts.—A firm imports semiconductor devices into the United States. It tests the devices and those which are found to be substandard or defective are sent to a foreign trade zone under zone restricted status so that they may be considered exported for the purposes of drawback.

Drawback is claimed under section 313(c) of the Tariff Act of 1930 (19 U.S.C. sec. 1313(c)). The rejected semiconductor devices are put through a process of destruction which leaves a valuable waste, gold scrap, as a residue. The firm wishes to enter this residue into the Customs territory from the foreign trade zone in order to recover the gold from the scrap.

Law and analysis.—According to section 3 of the Foreign Trade Zones Act, as amended (19 U.S.C. section 81c):

> * * * under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—
>
> (a) the drawback, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder * * *.

It is claimed that the crushing of the semiconductors is a destruction under 19 U.S.C. section 81c even though valuable gold scrap remains (by valuable it is meant that it is economically feasible to recover the gold in the scrap).

The law does not define what is meant by destruction. The term, however, is used often in Customs law. Section 557(c) of the Tariff Act of 1930 (19 U.S.C. sec. 1557(c)), for example, states that:

> Merchandise entered under bond under any provision of law, may * * * be destroyed * * * within the bonded period under Customs supervision, in lieu of exportation * * *.

The question, then, arises often and in many contexts as to what is a destruction for the purposes of Customs laws and regulations. The problem is that there are varying degrees of destruction possible. A particular article may be destroyed so that it is no longer considered to be the same article but rather a different article. Or it may be destroyed so that it is no longer a recognizable article but rather valuable scrap or waste. Or it may be destroyed so that it has no economic value left at all, that is, it is not economically feasible to salvage anything from the scrap. There is, therefore, wide latitude available in defining the term "destruction."

A question closely related to this is whether destruction may be combined with exportation and storage under 19 U.S.C. section 81c or whether there must be destruction or exportation or storage but not more than one of these. If the latter view is taken, then the definition of destruction must be as strict as possible, that is, destruction should mean "destruction as an article of commerce." *American Gas Accumulator Co.* v. *U.S.*, T.D. 43642 (Cust. Ct. 1929). However, this

view cannot be accepted. The articles must be brought into the zone for the sole purpose of exportation, destruction, or storage. Each of these three alternatives is set on an equal footing. If a choice had to be made of one of the three alternatives, thereby precluding any use of the other two, this would create some untenable situations. For example, if an article were brought to the zone for storage, under this interpretation it would have to remain there forever, it could never be destroyed or exported. In fact, any merchandise brought into a zone must be stored there at least for a short time; Congress did not intend to preclude exportation or destruction simply because the articles were also stored for a time in the zone. Storage, therefore, must be considered a complement to rather than a mutually exclusive alternative to exportation and destruction. However, the law treats storage, exportation and destruction equally so that they are all complementary rather than mutually exclusive alternatives. Thus, any combination of exportation, destruction, and storage zone restricted merchandise is permitted under 19 U.S.C. section 81c.

This conclusion fits in with the general practice in other contexts where destruction is one alternative provided by the law.

In the case of a bonded warehouse, the merchandise must be exported, destroyed, or withdrawn for consumption within the bonded period. It is common practice to allow a partial destruction of the merchandise as long as any valuable scrap is then exported or withdrawn for consumption. The bond is satisfied as long as there is no valuable residue remaining in the bonded warehouse from the original merchandise. Thus, a process of destruction in a bonded warehouse need not entail destruction as an article of commerce.

In the case of a temporary importation under bond, the merchandise must be exported or destroyed within the bonded period. This means that there may be no valuable residue from the merchandise left in the Customs territory at the end of the bonded period. The merchandise may undergo a process of partial destruction as long as any valuable waste is then destroyed as an article of commerce or exported. This is essentially the holding of *American Gas Accumulator*, *supra*.

In a foreign trade zone, zone restricted merchandise may only be stored, destroyed, or exported. According to Webster's New World Dictionary, "destroy implies a tearing down or bringing to an end by wrecking, ruining, killing, eradicating, etc. * * *." Any such process should be considered one of destruction for the purpose of the Foreign Trade Zones Act. The crushing of semiconductors would be considered a process of destruction, even though at the end of this process the scrap still has some economic value. That scrap remains zone restricted so that it may be stored, exported, or further destroyed in the zone. Nothing else may be done to the scrap in the zone. For

example, the scrap may not undergo a process of recovering the gold from the scrap since this is not a process of destruction.

If the scrap is being stored in the zone under zone restricted status, according to 19 U.S.C. section 81c it may come back into Customs territory only if "the Foreign-Trade Zones Board deems such return to be in the public interest * * *." Such return would not have any effect on the drawback paid since the merchandise is considered exported for the purpose of drawback once it is sent to the zone for exportation, destruction, or storage. Any duty applicable to the returned scrap would have to be assessed at time of entry into Customs territory.

Holding.—The crushing of semiconductors in a foreign trade zone is a destruction for the purposes of 19 U.S.C. section 81c even though valuable gold scrap remains. The scrap may be only exported, further destroyed, or stored in the foreign trade zone, under zone restricted status, unless the Foreign Trade Zones Board approves the return of the stored scrap to Customs territory. This ruling revokes T.D. 78–360.

(C.S.D. 80–68)

Drawback: Distribution of Drawback Among Products Resulting From Manipulation of Imported Merchandise

Date: July 31, 1979
File: DRA–1–09–R:CD:D
210574 B

Issue.—Assuming there is no market for a byproduct, may a cost value be assigned to that byproduct, while market values are assigned to other byproducts for which a market does exist?

Facts.—A corporation has an approved contract for drawback for a chemical. The manufacturing process which the chemical undergoes results in three primary products, of which two are sold and the remaining is used to produce five secondary products, of which two are sold and three are used as fuel or used to produce other products. There is no market for the three substances which are used as fuel or to produce other products, since there is no demand for them and if there were such a demand, shipping costs would make any sales unfeasible. Audit personnel, in verifying a claim for drawback by the corporation, have informed the claimant that relative values must be distributed based on market value; and a cost value, equal to current fuel value based on Btu's is not permitted by the regulations. The corporation states that Customs advised it verbally to use the cost value and has asked for clarification.

Law and analysis.—Section 22.20(e), Customs Regulations, provides clearly:

> The values to be used in computing the distribution of drawback where two or more products result from the manipulation of the imported merchandise pursuant to section 313(a), Tariff Act of 1930, *shall be market values* unless the special regulations under which drawback is claimed provide otherwise. [Italic added.]

In relevant part, section 313(a), Tariff Act of 1930 (19 U.S.C. 1313(a)), provides:

> * * * Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

We are dealing here with a substance that is in fact a byproduct for which no market exists. In such instances, the relative value to be assigned is the cost of production.

The case of *Kilburn Mill* v. *United States* (2 Cust. Ct. 203, C.D. 124 (1939)), discusses the question fully. At the time this case was decided, article 1068(b) Customs Regulations required the relative values be determined on a market value basis, as does the present regulation. Three products, cotton sliver, combed noils, and card strips resulted from the primary manufacturing process. The sliver, the most valuable product and the primary purpose of the manufacturing process, had to be subjected to further processing to produce fine cotton yarn. The noils and strips were sold and exported. The court noted it was undisputed that at the point of separation, i.e. at the time when relative values are to be assigned per section 313(a) of the Tariff Act, the sliver had "no open market value and was not sold in the ordinary course of trade * * * " (2 Cust. Ct., at 205). The collector, in determining drawback, figured the total cost or producing the three products—cotton, labor, and overhead. From this total cost, he then deducted the amounts realized on the sales of the noils and strips. The remainder he considered the value of the sliver. The court held that this method was correct in that the sliver was produced on a cost basis as the desired product, and that because the noils and strips were not sought and were not produced on a cost basis, to assign that basis to these products would have no factual grounds.

> Since the sliver was produced on a cost basis and was not sold in the market * * * its only value at the time of separation was its cost, that is, the total cost of material, labor, and overhead used in producing it, less any amounts recoverable by the sale of byproducts. (2 Cust. Ct. at 206).

On appeal, that court was of the opinion that if the collector was wrong, the appellant was also erroneous by ignoring the market values

of the noils and strips and assigning assumed costs of production far exceeding their market values. (*Kilburn Mill* v. *United States*, 27 CCPA 379, C.A.D. 114 (1940).)

In effect, the court stated that when market values exist, they must be used, and if they do not exist, cost of production shall be used for comparison:

> If the evidence showed that the noils and strips had no market values, we might assume that the costs of production of the three products (assuming that the costs of production of the byproducts noils and strips could be ascertained), in the absence of market values, would fairly reflect their actual or intrinsic values, and thus their relative values might be determined by comparing their relative costs. But we are clear this may not be done where the absence of market value of only one of the products is established, for it is clear that in a case like that before us we may not assume that the costs of production of the noils and strips reflect their values for purposes of comparison or otherwise. (*Kilburn Mill*, *supra*, 27 CCPA, at 386.)

The court further pointed out (27 CCPA, at 387) that the appellant had presented no evidence to show that relative values could be determined with any greater certainty than by the method used by the collector.

Holding.—Section 22.20(e) of the regulations notwithstanding, in the absence of a market value for a byproduct the value to be used at the time of separation is its cost of production, as set out by the courts in the cited cases, unless evidence is adduced to show that relative values can be determined with a greater certainty by applying another valuation method.

(C.S.D. 80–69)

Bonds: Return of Cash Deposited in Lieu of Surety; Bonding of Imported Automobile To Insure Compliance With EPA Requirements

Date: July 31, 1979
File: BON–1–R:CD:D JB 209865

Issue.—Whether cash or Government securities deposited in lieu of surety to bond imported automobile, in order to insure compliance with Environmental Protection Agency (EPA) requirements, may be returned upon certification of compliance with EPA regulations.

Facts.—The importer purchased an automobile while on vacation in Germany and entered it at Bridgeport, Conn. As entered into the country the car did not comply with requirements of the EPA. The

vehicle was released to the importer under bond (Customs Form 7551, Immediate Delivery and Consumption Entry Bond) subject to the requirement that a conformity statement be delivered to the District Director of Customs within 90 days after entry. Failure to bring the vehicle into compliance would require its delivery to the port of entry for reexportation. The importer brought the vehicle into compliance with pollution regulations within the stipulated time period, caused a letter to be sent from EPA to the District Director of Customs in Bridgeport and then sought the return of his cash bond. He was informed by the Hartford office that Customs policy was to hold the cash bond for a period of 2 years after the final liquidation. The cash was released upon deposit of U.S. Government securities. Release of the securities is now requested.

Law and analysis.—Established Customs policy with regard to the holding of cash or government securities given in lieu of surety on entry bonds states that such deposits shall not be released until 2 years after the date of liquidation. Section 521, Tariff Act of 1930, as amended, (19 U.S.C. 1521) provides this 2-year limit as the outside time limit when charges could be found legally due, in the event of reliquidation for fraud. Insofar as the purpose of the entry bond is usually to guarantee the payment of all charges legally due this time limit is appropriate to that purpose. Where there is substantial need to safeguard the revenue owed or potentially owed to the Customs Service the guarantee of the bond, whether in cash or by surety, should be retained until its purpose is discharged.

In certain circumstances, however, the purpose of safeguarding Customs revenue has no strong relevance to the reason for bonding. Such circumstances are found with the personal importation of motor vehicles that are entered into the United States not in compliance with evironmental or safety standards. In such cases, as with the present one, the purpose of requiring a bond is to insure that the vehicle will be brought into compliance with U.S. law, or else reexported. The possibility of loss of Customs revenue in personal importations of foreign automobiles is not substantial. Therefore, upon certification from the appropriate agency to the District Director of Customs where entry was made, cash or Government securities given to bond entry of a vehicle not in compliance with environmental or safety standards should be released. As the importer here points out, refusal to release the cash bond after payment of duty and vehicular modification subjects the small importer who must deposit cash to a significant penalty in the form of lost interest. In view of the purposes of the original bonding, such a result is unnecessary.

Holding.—Cash or Government securities deposited in lieu of surety to bond personally imported automobile in order to insure

compliance with federal pollution standards, may be returned to the importer upon certification of compliance to the District Director of Customs at the port of entry, provided the Director is satisfied that all other applicable regulations and requirements have been complied with.

(C.S.D. 80–70)

Classification: Actual Use Provision; Substitution; C.S.D. 80–1 Modified

Date: June 5, 1979
File: CLA–2–R:CV:MA
057110 E

DISTRICT DIRECTOR OF CUSTOMS,
1240 E. 9th Street,
Cleveland, Ohio

SIR: On January 11, 1979, a ruling was issued holding that the actual use provisions of general interpretative rule 10(e)(ii), could not be satisfied by substitution.

The facts in that case were that unassembled internal combustion engines were withdrawn from a foreign trade zone, the various parts placed in inventory at the manufacturer's plant, and then the various parts were used in the production of engines to be installed in farm tractors, agricultural machinery, and industrial motor vehicles. It was represented that of all the parts in the inventory, approximately 50 percent were unique to farm tractors and machinery, and approximately 50 percent were parts common to all applications. Because the unique parts were associated into kits identified by a specific CKD number at the time of importation, the manufacturer would know the number of engines destined for installation in an article classifiable under item 692.30 or 666.00, TSUS, and could show proof of use by number.

The decision of January 11, 1979, concluded that because there was a commingling of the common parts prior to the production of the engines and their installation in agricultural implements there has been a substitution of parts and the requirements of general interpretative rule 10(e)(ii), Tariff Schedules of the United States (TSUS) could not be met.

The contention has now been made that there is an established and uniform practice within the meaning of section 1315(d), title 19, United States Code, to accept as compliance with general interpretative rule 10(e)(ii), importations of knocked-down engines, the components of which are placed in stock, and then like any other engine

assembly operation in the country, are assembled on a moving production line which is automated, provided the production line output records establish that the number of knocked-down engines entered under item 660.40, TSUS, have been installed in articles classifiable under item 692.30 or 666.00, TSUS. The existence of a practice to accept production line output records as proof of use has been verified. Therefore application of the ruling of January 11, 1979, would result in the importation at a higher rate of duty or charge in violation of section 1315(d).

In view of the above, records supported by proof of use certifications by the end users may be used to show proof of use for purposes of item 660.40, TSUS, in the given circumstances. This letter should not be construed as a general determination of the issue of substitution with respect to general interpretative rule 10(e)(ii). Further, this practice should be limited to engines to be installed in argicultural tractors or implements.

The ruling of January 11, 1979 (published as C.S.D. 80–1), is accordingly modified.

(C.S.D. 80–71)

Powers of Attorney: When Powers of Attorney Are Necessary in Order for a Corporate Employee To Sign Customs Forms

Date: August 8, 1979
File: ENT–1–01–R:E:E
710862 MK

Facts.—A resident corporation inquires whether it must grant a power of attorney to its employees to execute certain Customs and foreign-trade zone forms, or whether these forms need only be executed by a duly authorized employee. The company wishes to limit the number of powers of attorney it grants.

Law and analysis.—The evidence which Customs requires of an employee's authority to transact Customs business on behalf of his employer is a Customs power of attorney as described in section 141.32, Customs Regulations. Thus, a duly authorized employee is one to whom such power of attorney has been granted. Any authorization which does not conform to the authorization described in section 141.32 would not be considered to be sufficient for Customs purposes. Therefore unless, as providing in section 141.38 of the regulations, the person signing the forms on behalf of a resident corporation is known to the district director to be the president, vice president, treasurer, or secretary of the corporation, a power of attorney must be issued to

an employee signing the following forms, about which the corporation inquired:

Customs Form 7505, Duty-Paid Warehouse Withdrawal for Consumption, Customs Form 7519, Combined Rewarehouse Entry and Withdraw for Consumption, Customs Form 3311, Declaration for Free Entry of Returned American Products, and Customs Form 5119–A (which is used instead of form 7523).

The assembler's declaration, provided for in section 10.24(a)(1) of the regulations is completed by the foreign assembler. The endorsement by the importer, provided for in section 10.24(a)(2), requires a power of attorney.

An add slip to an invoice, being part of the entry package, requires a power of attorney to the person submitting it on behalf of the importer.

Since business conducted in a foreign-trade zone is under the control of the Customs Service, it is treated as Customs business for the purpose of rules governing powers of attorney. Therefore foreign-trade zone forms require the signature of persons possessing a power of attorney.

A Customs Form 7512, Transportation Entry and Manifest, may be executed by an individual who does not hold a power of attorney, in accordance with section 111.3(d) of the regulations.

Holding.—An employee of a resident corporation who is not an officer named in section 141.38 of the regulations must have a Customs power of attorney to execute Customs forms 7505, 7519, 5119–A, and 3311; foreign-trade zone forms B–F (redesignated as forms 214, 215, and 216), the importer's endorsement to assembler's declaration, and an add slip to an invoice.

No power of attorney is needed to sign a Customs form 7512.

(C.S.D. 80–72)

Bonds: Application of 19 CFR 113.14(g)(1)(ii) in Immediate Delivery Situations

Date: August 1, 1979
File: BON–1–R:CD:D MR 209667

Issue.—Under what circumstances do the provisions of section 113.14(g)(1)(ii) of the Customs Regulations (19 CFR 113.14(g)(1)(ii)) apply?

Facts.—No facts are presented.

Law and analysis.— Section 113.14(g)(1)(ii) provides that a bond

in an amount equal only to "double the estimated amount of ordinary Customs duty on the merchandise (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectible by the district director" will be required when the merchandise involved remains in Customs custody until certain conditions are met. This is an exception to the bond amount of the value of the articles plus estimated duties and taxes which is usually required for an immediate delivery and consumption entry bond.

The provisions of section 113.14(g)(1)(ii) do not apply in any case where the bond relates to a special permit for immediate delivery under section 142.4 of the Customs Regulations (19 CFR 142.4). Bonds relating to immediate delivery procedures are covered by section 113.14(g)(1)(iv) which requires a bond in the amount equal to the value of the articles based on information furnished in the application, plus estimated duties and taxes. Such a high amount is required for a bond under immediate delivery procedures in order to insure performance of various requirements by the importer. These are: (1) Proper entry with payment of estimated duties. Under immediate delivery procedures, entry does not have to be made and estimated duties and taxes do not have to be deposited for 10 days after any part of the merchandise is released. Section 142.11(a) of Customs Regulations. Under consumption entry procedures, estimated duty and taxes must be deposited before the merchandise will be released. (2) Payment of any additional duties found to be due upon liquidation. Notwithstanding that examination of the merchandise is made by an inspector under immediate delivery procedures, until such time as the invoice is reviewed by the Import Specialist, the correctness of values and other information cannot be substantiated. (3) Redelivery of imported merchandise to Customs custody when needed for purposes of examination, inspection, or appraisement, or when found not to comply with the laws of the United States. (4) Delivery of various documents and the performance of conditions under which merchandise is released. If the bond required were not so high, it would often be more advantageous for the bond to be forfeited than for the importer to comply with Customs requests. For example, paying a bond's penal sum may cost less than redelivering goods or bringing them into compliance with health and safety standards. Because some safeguards are missing under immediate delivery procedures a bond with a higher amount is required.

Furthermore, section 113.14(g)(1)(ii) is not applied in all instances where merchandise is authorized for delivery under a duty paid consumption entry. This section has three additional conditions governing the length of time the merchandise involved will remain in Customs

custody. The merchandise must remain in Customs custody until all three conditions are met. Condition (a) provides that an examination of the merchandise must be completed. This examination is basically the same as the one required under section 142.6 before merchandise may be released under a special permit for immediate deliver. Condition (b) provides that the merchandise must stay in custody until "it is found to be truly and correctly invoiced." This condition could keep merchandise in custody for an undetermined time pending final appraisement. Condition (c) provides that the merchandise must stay in custody until "it is determined that its release is not precluded by law or regulation and it is entitled to admission into the commerce of the United States." This condition keeps merchandise in custody pending resolution of marking problems, requirements of other agencies (such as the Environmental Protection Agency or the Food and Drug Administration), and trademark and copyright matters, to name a few. All three conditions must be met before the bond can be set in an amount equal to double the estimated duty (plus taxes). Otherwise, the amount required on the bond must be the value of the articles plus estimated duties and taxes under section 113.14(g)(1).

Finally, it should be noted that under section 113.15 the district director may approve an immediate delivery and consumption entry bond only if he is satisfied that the amount of the bond is sufficient.

Holding.—The provisions of 19 CFR 113.14(g)(1)(ii) do not apply in any case where the bond relates to a special permit for immediate delivery. The provisions apply only in a case where the three conditions listed are satisfied before the merchandise is released from Customs custody.

(C.S.D. 80–73)

Drawback: 19 U.S.C. 1313(c); Reliquidation Claim Based on Delay by Customs

Date: August 1, 1979
File: DRA–1–09–R:CD:D B 210639

Issue.—May a person or company claiming drawback under 19 U.S.C. 1313(c) obtain reliquidation because of a delay by Customs in sending documents to Customs personnel at the point of exportation prior to lading and exportation of the merchandise upon which drawback is claimed?

Facts.—Drawback was denied on merchandise covered by three exportations because the merchandise was not returned to Customs custody for examination prior to exportation.

From February, 1973 until late 1978, Customs drawback personnel at Baltimore had a policy of accepting and reviewing drawback entries for claims under 1313(c) and if found to be in order, the papers were routed directly to the pier or other location where the merchandise had been placed by the importer or importer's agent. This policy has since been discontinued because Customs personnel discovered that this practice conflicted with section 22.33(a), Customs Regulations, although brokers and importers had found this procedure satisfactory until the EIS computer system was implemented.

The implementation of the EIS computer system has caused at least one day's delay from the time of submission of an entry to the time of delivery of the papers to the place of exportation because of the necessity of coding the papers for computer input. After implementation of the EIS system but before the Customs procedure described previously was abandoned, a drawback claimant filed three 1313(c) drawback entries.

The first drawback entry was filed on February 10, 1978, and the remaining two were filed on March 20, 1978. In each case, by the time approval by the import team, routing of the entry documents to the Entry Control Division for coding, and forwarding of the documents to the appropriate pier had occurred, the merchandise had been laden, leaving the inspector unable to examine the cargo.

The two entries filed on March 20, 1978 (128330–1), were liquidated "no drawback" on September 15, 1978. The first entry filed (120514 of February 20, 1978) has not been liquidated pending receipt of the relevant consumption entry papers from another customs port.

The entrant claims that it was the fault of Customs personnel that they were not given custody and afforded an opportunity to examine the merchandise. The claimant further states that drawback should be allowed on the unliquidated entry and that the two liquidated entires should be reliquidated pursuant to section 1520(c)(1), title 19, United States Code, and drawback allowed on them as well.

Law and analysis.—Section 1313(c), title 19, United States Code, provides, in relevant part:

> Upon the exportation of merchandise not conforming to sample or specification * * * upon which duties have been paid and which have been entered * * * and, within 90 days after release from customs custody * * * (are) *returned to customs custody* for exportation * * *. [Italic added.]

Section 22.33(a), Customs Regulations, provides, in relevant part:

> Upon receipt of the drawback entry, the District Director shall assign a number thereto * * * approve the place of deposit of the merchandise specified by the person making entry * * * and return the original (copy of the entry) to the entrant for

presentation *with the merchandise to the Customs officers at the place of deposit.* [Italic added.]

Section 1514, title 19, United States Code, provides that with certain exceptions decisions of the appropriate Customs officer in denying drawback must be protested within 90 days of the notice of liquidation or reliquidation, or the decision is final. It is clear that the decision of denial on the two entries filed March 20, 1978, and reliquidated no drawback on September 15, 1978, have become final unless the drawback claimant can show that the action of the district director falls within one of the exceptions set out in section 1514. One of these exceptions is section 1520(c)(1), title 19, United States Code, which provides:

> (c) Notwithstanding a valid protest was not filed, the appropriate customs officer may * * * reliquidate an entry to correct (1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law * * * in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within 1 year after the date of entry, or transaction, or within 90 days after liquidation * * * when the liquidation * * * is made more than 9 months after the date of entry * * *.

The alleged error or mistake was not brought to the attention of Customs until some time after April 24, 1979, the date of a letter from the claimant's broker to the District Director at Baltimore. It is clear that this date is more than 1 year after entry; thus section 1520(c)(1) is unavailable to the claimant for the two March 20, 1978 entries.

Holding.—The alleged error or mistake was not timely called to the attention of Customs, as required by section 1520(c)(1) in the case of the two March 20, 1978 entries. Therefore, these two entries cannot be reliquidated.

In regard to the remaining entry, Customs field personnel should make a determination of whether their actions in not following the requirements of section 22.33(a) was the cause of the applicant's failure to have the merchandise examined prior to exportation.

(C.S.D. 80–74)

Duty Assessment: Reimportation of Duty-Paid Merchandise Exported in Error; Nonexportation-Nonimportation Principle

Date: August 3, 1979
File: ENT–1–01–R:E:E
710565 M

This ruling reviews a protest regarding the sufficiency of the doc-

umentation submitted to establish whether the merchandise involved was previously imported into the United States and accidentally taken back into Canada.

Issue.—Was the District Director's refusal to accept the documentation submitted as establishing proof that the merchandise was accidentally returned to Canada a clerical error, mistake of fact, or other inadvertence within the meaning of section 520(c)(1), Tariff Act of 1930, as amended?

Facts.—On April 22, 1978, a railcar containing a carload of wrapping paper arrived at International Falls, Minn. On May 5, 1978, a consumption entry was filed for that merchandise along with the deposit of estimated duties.

On May 12, 1978, this same railcar left Detroit and entered Canada at the Port of Windsor as an empty car. This same railcar arrived at Detroit on June 14, 1978, from Canada containing a carload of wrapping paper. On July 6, 1978, a consumption entry was filed for the wrapping paper along with the deposit of estimated duties.

The importer contends that the merchandise for which a consumption entry was filed on July 6, was the same merchandise for which a previous consumption entry had been filed on May 5. He states that the merchandise was accidentally taken back to Canada and that such merchandise on its return to the United States should have been exempt from duty under the nonexportation-nonimportation principle. In support of his contention, the importer submitted a copy of a Canadian Customs landing certificate dated June 5, 1978, which states that the railcar arrived at Windsor on May 12, 1978, from the United States and has remained in continuous railway custody while in Canada. In addition, the importer submitted a rail waybill dated May 25, 1978, with a statement to the effect that the railcar arrived at Richmond, Ontario, as empty and was found loaded. The importer points out that in the past Customs has accepted such documentation in support of a nonexportation-nonimportation claim and that the District Director's failure to accept such documentation amounted to a clerical error, mistake of fact, or other inadvertence within the meaning of section 520(c)(1), Tariff Act of 1930, as amended. The importer also contends that Customs failed to follow CIE 477/59 dated March 30, 1959, which provides for duty-free entry clearance of previously imported merchandise under the nonexportation-nonimportation principle.

The District Director contends that the documentation submitted by the importer to support his request for duty free entry is inconclusive and moreover, deals with the railcar rather than the merchandise itself. He notes that in 1976, Canadian Customs stopped manning its ports of entry at all rail terminals in favor of a post audit and spot

check system. In the past the Canadian Customs landing certificate would indicate that the rail car was in Canadian Customs custody. Now, this landing certificate merely states such car was in continuous railway custody. Furthermore, the rail companies, as a cost-saving measure, no longer check railcars entering Canada. Because of these changed conditions, the District Director contends that the documentation submitted by the importer is no longer sufficient to establish that the merchandise entered at Detroit on July 6, 1978, is exempt from duty under the nonexportation-nonimportation principle. The District Director notes that the importer did not satisfy the two conditions set forth in CIE 477/59 dated March 30, 1959.

Law and analysis.—Section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)) authorizes the District Director to reliquidate an entry within an appropriate time period if a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law is involved.

Nassau Distributing Co., Inc. v. *United States*, 29 Cust. Ct. 151, C.D. 1459, and *F. W. Meyers & Co., Inc.* v. *United States*, 29 Cust. Ct. 202, C.D. 1468, in effect, provided that merchandise previously imported could be considered upon its return to the United States as not having been truly exported and therefore not imported at that time if the documentary evidence establishes that at the time of shipment there was no intention to export and if the merchandise involved was not mingled with and became a part of the mass of things belonging to the foreign country to which it was transported.

CIE 477/59 dated March 30, 1959, states that previously imported merchandise may be cleared without entry under the nonexportation-nonimportation principle if (1) a written statement by the foreign customs stating that the merchandise remained in its custody during its stay in the foreign country, and (2) a written explanation by the carrier concerning the overcarriage of the merchandise are furnished, provided the U.S. Customs officer is satisfied by the documentary evidence that the goods were sent to the foreign country without any intention that they enter the trade and commerce of that country.

We agree with the District Director's determination that the evidence submitted by the importer did not support a claim for duty-free exemption under the nonexportation-nonimportation principle. Because of a change in procedure by Canadian Customs, as mentioned above, the Canadian Customs landing certificate no longer reflects that the railcar was in continuous Canadian Customs custody. This matter is compounded by the fact that the rail companies no longer check railcars entering Canada and thus the rail waybill would not truly reflect the fact that the wrapping paper was taken back to Canada. The evidence submitted by the importer merely establishes

that the railcar was taken back to Canada, but does not establish that the merchandise brought in by that railcar on April 22, 1978, was taken back.

In addition, the importer has failed to satisfy the two conditions set forth in CIE 477/59 dated March 30, 1975. The evidence submitted by the importer did not contain a foreign customs document reflecting that the merchandise remained in its custody during its stay in the foreign country and an explanation by the carrier in regard to the overcarriage of the merchandise.

Holding.—The documentation submitted by the importer was not sufficient to show that his merchandise qualified for exemption from duty under the nonexportation-nonimportation principle. Thus, the District Director's denial of the importer's claim was not a clerical error, mistake of fact, or other inadvertence within the meaning of section 520(c)(1), Tariff Act of 1930, as amended. The protest is therefore denied in full.

(C.S.D. 80–75)

Conditionally Free Merchandise: Foreign-Made Tools of Trade

Date: August 3, 1979
File: BAG–5–05–R:E:E
710884 HS

To: District Director of Customs, Chicago, Ill.
From: Director, Entry Procedures and Penalties Division, Headquarters.
Subject: Tools of Trade Exception.

This was initiated by (name). It concerns a duty charged on equipment shipped out of the country and subsequently reimported.

Issue.—May a Japanese-made industrial fiberscope and a cold light source that are shipped out of the country by a corporation as professional tools for the internal inspection of steam and cooling systems be reimported duty-free?

Facts.—The company purchased an industrial fiberscope and a cold light source that were manufactured in Japan. Import duty was paid when the merchandise was brought in from Japan. The equipment is used by the company's technical sales representatives as professional tools for the internal inspection of steam and cooling systems. Use of the equipment is controlled by the company's product manager.

In this case, the product manager took the fiberscope and light source to O'Hare Airport in Chicago and shipped the equipment to one of the company's salesmen in Canada. The salesman used the equipment to inspect his customer's equipment. When the test was

completed, the salesman took the equipment to the airport and sent it back to the product manager. Nothing was bought or sold during the trip. No value was added to the equipment. Upon entry, the District Director charged a duty on the importation of the equipment. The company requests an exemption from duty.

Law and analysis.—Item 800.00 of the Tariff Schedules of the United States (1978) allows free entry for products of the United States which are exported for temporary use abroad if the articles are returned without having been advanced in value or improved in condition while abroad. In this case, the equipment was manufactured in Japan. As it is not a product of the United States, the equipment is not entitled to free entry under this item of the Tariff Schedules.

There is no specific provision that exempts from duty merchandise assigned to and entered by or for the account of a corporation. Item 810.20 of the Tariff Schedules provides duty-free entry for tools of trade, occupation or employment, which have been taken abroad by or for the account of any person arriving in the United States from a foreign country. This is a personal exemption, available only to individuals. A corporation could bring equipment into the country under this exemption if an individual of the corporation took the equipment in and out of the country in his own name.

T.D. 53136 makes this possible by providing that ownership of tools of trade is not a condition for free entry. Merchandise of domestic or foreign origin exported from the United States and reimported by the same individual, even though the tools are not his personal property, can qualify for free entry under item 810.20.

In this case, an individual—the product manager—had responsibility for the fiberscope and cold light source. However, the product manager shipped the equipment to a salesman in Canada and the salesman shipped the equipment back to the product manager; there was no person arriving in the United States from a foreign country, which is required for the tools of trade exemption to apply. One individual must be in the foreign country when the equipment is in the foreign country and the same individual must return to the United States when the equipment returns. As this did not occur in this case, the equipment is not entitled to free entry as tools of trade, and duty must be paid.

Holding.—Foreign-made equipment that is not exported from the United States and reimported by the same individual is not entitled to exemption from duty either as articles exported and returned or as tools of trade under items 800.00 or 810.20 of the Tariff Schedules, respectively.

Decisions of the United States Customs Court

Custom Rules Decision

(C.R.D. 80–4)

SHELL OIL CO., PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 75–12–03287

Refusal to reliquidate

[Cross-motions for summary judgement denied; motion to dismiss denied.]

(Dated May 6, 1980)

Shaw and Stedina (*Charles P. Deem* on the briefs) for the plaintiff.
Alice Daniel, Assistant Attorney General; *David M. Cohen*, Director, Commerical Litigation Branch (*Sheila N. Ziff* on the briefs), for the defendant.

FORD, Judge: This action is before me on cross-motions for summary

judgment made pursuant to rule 8.2 of the rules of this court. Defendant has also moved pursuant to rule 4.7(b) of the rules of this court for dismissal of the consolidated action on the ground the court lacks jurisdiction.

The merchandise consists of petroleum products manufactured in the United States by plaintiff and thereafter exported. The primary question presented is whether the exported merchandise, manufactured from acetone and crude wax, is entitled to drawback. In addition, the question of the timeliness of the claims as well as the designation of rates for drawback purposes of the acetone and crude wax is involved. An additional question exists as to whether there are valid grounds for relief under section 520(c)(1) of the Tariff Act of 1930, as amended.

A motion for summary judgment, made pursuant to rule 8.2, which is "ripe" for determination, is premised upon the fact that there is no genuine issue as to any material fact. Plaintiff has set forth 38 paragraphs alleging that no issue of material fact exists, and defendant has set forth 50 paragraphs for the same purpose. Defendant further alleges, but contends it is not material to the decision, a dispute of four paragraphs of plaintiff's statement as to lack of a genuine issue of any material fact. These paragraphs are 15, 18, 26, and 27. Plaintiff disputes seven paragraphs of defendant's statement as to lack of genuine issue of any material fact. They are paragraphs 19, 20, 21, 47, 48, 49, and 50. The court is under no duty to grant summary judgment merely because both parties are under the belief that there are no factual issues to be tried. *C. J. Tower & Sons* v. *United States*, 68 Cust. Ct. 377, C.R.D. 72–11, 343 F. Supp. 1387 (1972); *L. B. Watson* v. *United States*, 75 Cust. Ct. 185, C.R.D. 75–5 (1975).

As indicated, supra, in order for the court to properly entertain a motion for summary judgment, it must be convinced that there are no genuine issues as to any material fact. Aside from the disagreement of the parties with respect to the 11 paragraphs referred to above, the court is of the opinion that other genuine issues of material fact exist, and accordingly the matter is not ripe for summary judgment. *Braniff Airways, Inc.* v. *United States, 84 Cust. Ct.*—, C.D. 4837 (1980).

Defendant's motion to dismiss for lack of jurisdiction presents, in the opinion of the court, questions which would better be resolved by trial in view of the history of the attempts by plaintiff to obtain a drawback rate.

In view of the foregoing, this action is properly the subject of a trial, and not a motion for summary judgment.

It Is Hereby Ordered that the cross-motions for summary judgment and the motion to dismiss are denied.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *May 12, 1980.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P80/67	Re, C.J. May 9, 1980	Olympia Sports Co., Inc.	77-5-00744, etc.	Item 705.35 15%	Item 735.05 7.5%	David E. Porter v. U.S. (C.D. 4641)	New York Leather gloves, style Nos. 600, 604, 650
P80/68	Richardson, J. May 9, 1980	Flextrac Nodwell, Ltd., a/c Border Brokerage Co., Inc., et al.	77-4-00639	Item 358.06 16%, 14%, 12.5% or 11%	Item 692.27 8.5%, 7.5%, 6.5% or 5.5%	Border Brokerage Company, Inc. v. U.S. (C.D. 4756)	Blaine (Seattle) Track tread material for motor vehicles

P80/69	Watson, J. May 9, 1980	Ruben's Originals	78-2-00311	Item 737.40 17.5%	Item 773.10 8.5%	Judgment on the pleadings	Los Angeles Plastic animals
P80/70	Watson, J. May 9, 1980	Ruben's Originals	78-2-00229	Item 737.40 17.5%	Item 773.10 8.5%	Judgment on the pleadings	Los Angeles Plastic animals

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/144	Re, C.J. May 8, 1980	J. E. Higgins Lumber Co.	R58/23470, etc.	Export value	Net appraised value less 7¼%, net packed	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Francisco Japanese plywood
R80/145	Re, C.J. May 8, 1980	C. J. Tower & Sons of Buffalo, Inc.	R69/482	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker automobiles and optional equipment

R80/146	Re, C. J. May 8, 1980	C. J. Tower & Sons of Buffalo, Inc.	R69/493	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo, Studebaker automobiles and optional equipment
R80/147	Re, C.J. May 8, 1980	C. J. Tower & Sons of Buffalo, Inc.	R69/494	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker automobiles and optional equipment

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R80/148	Re, C. J. May 8, 1980	C.J. Tower & Sons of Buffalo, Inc.	R69/496	Cost of production	As set forth in decision and judgment in column designated "Total Cost of Production of Basic Automobiles" at amounts in Canadian currency, including value of U.S. components as appraised; value of optional equipment on each automobile in Canadian currency is value found by appraising official as reflected on invoices	U.S. v. C. J. Tower & Sons of Buffalo, Inc. (C.A.D. 1079)	Buffalo Studebaker automobiles and optional equipment
R80/149	Watson, J. May 9, 1980	Hayim & Co.	R60/2393, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R80/150	Watson, J. May 9, 1980	Hayim & Co.	R60/7336, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs
R80/151	Watson, J. May 9, 1980	Hayim & Co.	R62/1952, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Rugs

R80/152	Watson, J. May 9, 1980	Hurricane International	R65/20210	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Francisco Rugs
R80/153	Watson, J. May 9, 1980	New York Merchandise Co., Inc.	R67/8970	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	San Diego Rugs
R80/154	Watson, J. May 9, 1980	New York Merchandise Co., Inc.	R65/17958, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Diego Rugs
R80/155	Watson, J. May 9, 1980	J. C. Penney	R60/18888	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	Los Angeles All tubing mats
R80/156	Watson, J. May 9, 1980	J. C. Penney	R60/19749	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	New York All tubing mats

Judgment of the U.S. Customs Court in Appealed Case

MAY 9, 1980

APPEAL 79–19.—United States *v.* Endicott Johnson Corporation.—COTTON CANVAS SHOE UPPERS—ARCH STITCHING—COTTON ARTICLES, ORNAMENTED—COTTON ARTICLES, NOT ORNAMENTED—TSUS.—C.D. 4787 affirmed March 13, 1980 (C.A.D. 1242).

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through December 21, 1979, are available in microfiche format at a cost of $17.70 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: May 19, 1980.

JOHN T. ROTH,
Acting Director,
Regulations and Research Division.

Date of decision	File No.	Issue
4-24-80	104415	Vessel repair: Whether a vessel documented under the laws of the United States and used solely as an oceanographic research vessel is subject to the vessel repair statute

Date of decision	File No.	Issue
4–20–80	711722	Reliquidation: Grounds for reliquidation under 19 U.S.C. 1520(c)(1)
4–14–80	712602	Country-of-origin marking: Whether raised lettering on imported batteries meets the requirements of 19 U.S.C. 1304
4–14–80	712790	Prohibited and restricted importations: Trademark infringement: Trousers
4–17–80	064496	Classification: Inflatable globe (273.30)
4–17–80	064708	Classification: Gang mowers (666.00, 666.10, 870.40)

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of CERTAIN COMPUTER FORMS FEEDING TRACTORS AND COMPONENTS THEREOF	Investigation No. 337–TA–77

Notice of Commission Determination Amending Complaint

BACKGROUND

On March 3, 1980, respondents Shinshu Seiki Co. and Epson America, Inc., filed a motion (motion No. 77–1) to dismiss the complaint of Precision Handling Devices, Inc., and to terminate the investigation. Respondents argued that the assignment dated April 4, 1973, which was attached to the complaint, did not assign to the complainant U.S. Letters Patent No. 3,825,162, since under the wording of the assignment, only the rights to a "design letters patent" were assigned and the '162 patent is not a design patent.

On March 17, 1980, complainant filed an affidavit by Leo Hubbard confirming that Hubbard intended to assign the '162 patent to complanant Precision Handling Devices, Inc. On March 19, 1980, respondent filed a reply to the affidavit, stating that the assignment by its terms was not an assignment of the '162 patent, and failed to act as an assignment of the "utility patent."

On March 27, 1980, complainant moved (motion No. 77–4) to

amend the complaint by adding the inventor Leo Hubbard as a party, and by attaching to the complaint a new assignment in which the inventor assigned all the rights in the '162 patent to complainant Precision Handling Devices, Inc., and confirmed that the old assignment had assigned rights under the '162 patent to Precision.

Respondents answered complainant's motion (motion No. 77–4) to amend complaint on April 1, 1980, contending that the new assignment, by conveying all rights in the '162 patent to Presicion Handling Devices, Inc., put the inventor Leo Hubbard in a position where he now has no standing to sue. Although the respondent did not oppose complainant's motion to amend the complaint, they reserve the right to two defenses: (1) That the investigation was improperly initiated by reason of complainant's lack of title to the patent in question, and (2) that the inventor, if added now as a complainant, would have no standing to sue because of the unconditional assignment of the patent to complainant Precision Handling Devices, Inc.

On April 9, 1980, Administrative Law Judge Saxon recommended first that motion 77–4 be granted to amend the complaint by adding a "confirmatory assignment," thereby curing complainant Precision Handling Devices, Inc., initial lack of standing, and second, to add as complainant Leo James Hubbard, the inventor named in U.S. Letters Patent No. 3,825,162. It was further recommended that no action on the respondent's motion 77–1 was required.

COMMISSION DETERMINATION

Having considered the recommendation of the presiding officer and the submissions of the parties, the Commission Determines that complainant's motion (motion No. 77–4) is granted in part. The complaint is amended to include a "confirmatory assignment" as an attachment thereto, so as to be part of the attachments listed in paragraph 25 of the complaint, thereby curing any problem which existed as to complainant Precision's initial lack of standing in this investigation. The Commission further determines that that part of complainant's motion 77–4 seeking to amend the complaint to add Leo J. Hubbard, the inventor of the '162 patent, as a co-complainant is denied.

The Commission determines to deny respondents' motion 77–1 to dismiss the complaint and terminate the investigation.

A copy of the Commission's memorandum opinion is available in the Office of the Secretary of the Commission.

By order of the Commission.

Issued: May 12, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of	
CERTAIN PRECISION RESISTOR CHIPS	Investigation No. 337–TA–63/65

Notice of Termination

Upon consideration of the presiding officer's recommendation and the record in this proceeding, the Commission is ordering the termination of investigation No. 337–TA–63/65, Certain Precision Resistor Chips.

The order is effective as of May 9, 1980.

Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission order. Such petitions must be in accord with Commission rule 210.56 (19 CFR 210.56).

Copies of the Commission's action and order, the Commissioners' opinion(s), and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.), in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0161.

Notice of the institution of this investigation was published in the Federal Register of January 17, 1979, and April 25, 1979 (44 F.R. 3575, 44 F.R. 25522).

By order of the Commission.

Issued: May 9, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of	
CERTAIN AIRTIGHT CAST-IRON STOVES	Investigation No. 337–TA–69

Remand of Order No. 69–24

On April 28, 1980, the presiding officer in the above-captioned case issued order No. 69–24, certifying a motion and consent order agreements to the Commission. The Commission is remanding that order to the presiding officer in order to obtain a recommendation regarding whether the consent order agreements should be accepted.

Proposed section 337 consent order rules provide, in proposed section 210.51(a)(2), that: "The licensing or other agreement and any agreements supplemental thereto, and affidavit shall be certified by the presiding officer to the Commission with his recommendation."

Although the proposed consent order rules are not in effect, the Commission believes that having the benefit of a recommendation by the presiding officer is beneficial and in conformance with sound administrative practice. Although rule 210.14 of the Commission's Rules of Practice and Procedure reserve certain public interest factors to the Commission for initial consideration, these factors are not exhaustive of all public interest and equitable considerations that the Commission takes into account when deciding whether to accept an agreement. The practice of obtaining a recommendation from the presiding officer has been followed with regard to settlement agreements. *See Certain Resistor Chips*, investigation No. 337–TA–63/65 (Recommended Determination of February 22, 1980). The same procedure has been followed with regard to consent order agreements. See *Certain Cattle Whips*, invesitgation No. 337–TA–57 (Recommended Determination of April 11, 1979).

The Commission therefore requests that the presiding officer make recommendations regarding the consent order here in issue.

By order of the Commission.

Issued: May 9, 1980.

KENNETH R. MASON,
Secretary.

(19 CFR Part 200)

EMPLOYEE RESPONSIBILITIES AND CONDUCT

AGENCY: U.S. International Trade Commission.

ACTION: Final rules.

SUMMARY: These rules establish procedures for administrative enforcement of the restrictions on postemployment activity contained in title V of the Ethics in Government Act of 1978, Public Law No. 95–521, 92 Stat. 1864 (18 U.S.C. 207) (as amended by Public Law No. 96–28, 93 Stat. 76 (1979)) with respect to former employees of the U.S. International Trade Commission.

EFFECTIVE DATE: May 15, 1980.

FOR FURTHER INFORMATION CONTACT: The Honorable Bill Alberger, Ethics Counselor, or Claud L. Gingrich, Esq., Deputy Counselor, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436; telephone 202–523–0133, or 202–523–0493, respectively.

SUPPLEMENTARY INFORMATION: On October 26, 1978, Congress enacted the Ethics in Government Act of 1978. Title V of the act amended 18 U.S.C. 207, which restricts postemployment con-

flicts of interest. Congress further amended 18 U.S.C. 207 on June 22, 1979, with passage of Public Law No. 96–28, 93 Stat. 76. Subsection 207(j) of title V provides for administrative sanctions to be applied by an agency to a former officer or employee found to have violated subsections 207 (a), (b), or (c). Agencies are required, in consultation with the Director of the Office of Government Ethics, to establish procedures for handling allegations of a violation of subsections (a), (b), or (c), affording the affected former officer or employee notice and opportunity for a hearing, and applying an administrative sanction if a violation is found.

After consulting with the Director, the U.S. International Trade Commission published proposed administrative enforcement rules in the Federal Register (55 F.R. 11512) on February 21, 1980. Notice was given that comments were to be submitted by March 24, 1980. Only one comment was received, a request for clarification of which former employees are subject to the enforcement procedures. The rules apply to anyone who has been a Government employee since the effective date of the act. No date is specified in our rules because it differs for different restrictions and because it is inappropriate to restate the substantive restrictions in the Commission's enforcement rules.

Title 19, part 200, of the Code of Federal Regulations is hereby amended by the addition of a new subpart D, to be composed of sections 200.735–124 through 126, as follows:

CONTENTS

AUTHORITY: Ethics in Government Act of 1978, Public Law No. 95–521, 92 Stat. 1864 (18 U.S.C. 207) (as amended by Public Law No. 96–28, 93 Stat. 76 (1979)); 45 F.R. 7402, (1979) (to be codified at 5 CFR part 737).

SUBPART D—PROVISIONS FOR ADMINISTRATIVE ENFORCEMENT OF POSTEMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Sec. 200.735–124. General.

The procedures in this subpart are established pursuant to subsection 207(j) of title 18, United States Code, for the administrative enforcement of the restrictions on postemployment activities in title V of the Ethics in Government Act of 1978 (18 U.S.C. 207 (a), (b), and (c)) and implementing regulations published by the Office of

Government Ethics (5 CFR part 737). Subsections 207 (a), (b), and (c) of title 18, United States Code, prohibit certain forms of representational activity or communications by former Commission employees.

Sec. 200.735–125. Exemption from restrictions.

(a) *Scientific and technological information solicited by the Commission.*—Communications of a former Commission employee solely for the purpose of furnishing scientific or technological information solicited by the Commission in the course of its statutory investigations are exempted from the restrictions on postemployment practices.

(b) *Exemption for persons with special qualifications in a technical discipline.*—(1) *Applicability.*—A former Commission employee may be exempted from the restrictions on postemployment practices if the chairman, in consultation with the Director, Office of Government Ethics (the Director), executes a certification published in the Federal Register that the former Commission employee has outstanding qualifications in a scientific, technological, or other technical discipline; that the former Commission employee is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by the former Commission employee's participation.

(2) *Certification authority.*—Certification shall be by the chairman, or in the absence thereof, by the acting head of the Commission. Consultation with the Director shall precede any certification. The exemption is effective upon the execution of the certification. The Secretary shall immediately transmit the certification to the Federal Register for publication.

(c) *Testimony and statement under oath or subject to penalty of perjury.*—(1) *Applicability.*—A former Commission employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Commission employee. This provision does not, however, allow a former Commission employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c), to testify on behalf of another as an expert witness except (i) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the Commission employee participated, utilizing his or her expertise, or (ii) in any proceeding where it is determined that another expert in the field cannot practically be obtained, that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Commission employee's testimony is required in the interest of justice.

(2) *Statements under penalty of perjury.*—A former Commission employee may make any statement required to be made under penalty

of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

Sec. 200.735–126. Administrative enforcement proceedings.

The following are basic guidelines for administrative enforcement of restrictions on postemployment activities:

(a) *Initiation of administrative disciplinary hearing.*—(1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information does not appear to be frivolous, the chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. Any investigation or administrative action will be coordinated with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice informs the Commission that it does not intend to initiate criminal prosecution.

(2) Whenever the chairman has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737), he or she shall initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in subsection (b).

(3) The chairman shall take all necessary steps to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(b) *Notice.*—(1) The chairman shall provide the former Commission employee with notice of an administrative disciplinary proceeding and an opportunity for a hearing.

(2) Notice to the former Commission employee must include—

(i) A statement of allegations and the basis thereof in detail sufficient to enable the former Commission employee to prepare an adequate defense;

(ii) Notification of the right to a hearing;

(iii) An explanation of the method by which a hearing may be requested; and

(iv) A copy of this subpart.

(c) *Examiner.*—(1) The presiding official at proceedings under this subpart shall be an individual to whom the chairman has delegated authority to make a recommended determination (hereinafter referred to as examiner).

(2) An examiner shall be an experienced government attorney of high moral character and sound judgment.

(3) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(d) *Scheduling of hearing.*—In setting a hearing date, the examiner shall give due regard to the former Commission employee's need for—

(i) Adequate time to prepare a defense properly, and

(ii) An expeditious resolution of allegations that may be damaging to his or her reputation.

(e) *Hearing rights.*—A hearing shall include, at a minimum, the following rights:

(1) To be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument; and

(5) To obtain a transcript or recording of the proceeding on request.

(f) *Burden of proof.*—In any hearing under this subpart the Commission has the burden of proof and must establish a violation by clear and convincing evidence. The case of the Commission shall be presented by the Office of the General Counsel.

(g) *Recommended determination.*—(1) The examiner shall make a recommended determination exclusively on matters of record in the proceeding and shall set forth therein all findings of fact and conclusions of law relevant to the matters at issue. The recommended determination shall be delivered to the parties.

(2) Within 10 days of the date of receipt of the recommended determination, either party may submit to the chairman exceptions to the recommended determination and alternative findings of fact and conclusions of law.

(h) *Final administrative decision.*—(1) Within 40 days of the date of the recommended determination, the chairman shall make a final administrative decision based solely on the record of the proceedings.

(2) In the event that no hearing is requested, the chairman shall make a final administrative decision within 40 days of the date notice is provided to the former employee and the record of the proceedings shall consist of the statement of allegations as defined in subsection (b)(2)(i) and whatever written response the former employee shall provide.

(3) The chairman shall specify in the final administrative decision the findings of fact and conclusions of law that differ from the recommended determination of the hearing examiner.

(i) *Administrative sanctions.*—The chairman may take appropriate

action in the case of any individual who is found in violation of 18 U.S.C. 207 (a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737) after a final administrative decision by—

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed 5 years. This prohibition may be enforced by directing Commission employees to refuse to participate in any such appearance or to accept any such communication;

(2) Taking other appropriate disciplinary action.

(j) *Judicial review.*—Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or these regulations may seek judicial review of the administrative determination. Review shall be before the appropriate U.S. district court.

By order of the Commission.

Issued: May 9, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN INCLINED-FIELD ACCELERATION TUBES AND COMPONENTS THEREFOR	Investigation No. 337–TA–67

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9 a.m., on June 6, 1980, in the Dodge Center, second floor, 1010 Wisconsin Avenue NW., Washington, D.C. The purpose of this prehearing conference is to review the trial memoranda submitted by the parties, to stipulate into the record as many exhibits as possible, and to discuss any questions raised by the parties relating to the hearing.

Notice is also given that the hearing in this proceeding will commence at 9 a.m., on June 16, 1980, in the Dodge Center, second floor, 1010 Wisconsin Avenue NW., Washington, D.C.

The Secretary shall publish this notice in the Federal Register.

Issued: May 8, 1980.

JANET D. SAXON,
Administrative Law Judge.

Index

U.S. Customs Service

Customs Court

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
DEPARTMENT OF THE TREASURY (CUSTOMS)
(TREAS. 552)

U.S.MAIL

CD SERIA300SDISSDUE022R 1
SERIALS PROCESSING DEPT
UNIV MICROFILMS INTL
300 N ZEEB RD
ANN ARBOR MI 48106

U.S. GOVERNMENT PRINTING OFFICE: 1980